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MARCH 7. 17th

I Do Appoint DANIEL MIDWINTER
Print the Tryal of Francis Francis
And that no other Person presume to Print
the Same.

THO. BURY

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THE
TRYAL
OF

Francis Francia,

FOR

High Treason,

AT THE

SESSIONS-HOUSE in the *Old-Baily* ;

ON TUESDAY Jan. 22. 1716.

Presided by the RIGHT HONOURABLE

The Lord Chief-Baron BURY :

And also by

COUNSELL for His MAJESTY, and for the Prisoner.

LONDON:

Printed by D. MIDWINTER, at the *Three Crowns* in
St. Paul's Church-Yard. M DCC XVII.

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TRAYAL

OF



AT THE

Seasons. House in the Old Bath;

On Tuesday Jan. 22. 1716.

Printed by the Right Honourable

The Lord Chief-Baron Bury:

And also by

The Council for the Majesty, and for the Religion.

LONDON:

Printed at B. M. WINTER, at the Three Crowns in
St. Pauls Church-Yard, M. DCC. XLII.

Die Martis 22 Die Januarij, 1716.

Francis Francia having been formerly Arraigned upon the Indictment found against him for High-Treason, and having pleaded Not Guilty; was this Day brought to the Bar upon his Tryal.

Clerk. of Arraignments.

YOU the Prisoner at the Bar: These Men that you shall hear call'd, and personally appear, are to pass between Our Sovereign Lord the King and you, upon Trial of your Life and Death. If therefore you will Challenge them, or any of them; your Time is to Challenge them as they come to the Book to be Sworn, and before they be Sworn.

Cl. of Arr. Sir Dennis Dutry, Bart.

Prisoner. Are you a Freeholder in this City?

Sir D. Dutry. Yes.

Sir J. Fekyl. My Lord, We that are Council for the King desire, that those who are call'd may be ask'd that Question; Whether they have Freehold (or Copy-hold) of Ten Pounds per Annum, or not; before they are Sworn in Chief?

Mr. Att. Gen. We suppose the Prisoner will ask that Question; and therefore we desire that it may be ask'd of Every One as they come to the Book.

Mr. Ward. It is a Challenge on Both Sides.

L. C. Baron. They ought to be Sworn whether they have a Freehold or not, if they would excuse themselves.

Mr. Hungerford. I have nothing to offer against it. In case the King's Council think fit to proceed in that Method, we concur in it. I should have mov'd it my self, if they had not.

Mr. Att. Gen. It was so in the Tryals of the Rebels.

Prisoner. He has had a Quarrel with me; and there was a Suit depending between us about Seven Years ago: And I Challenge him for Cause.

Mr. Att. Gen. He may challenge him peremptorily, if he will. But if he challenges him for Cause, he must prove it.

Prisoner. Sir Dennis will not deny it.

L. C. Baron. If you challenge him, you must prove your Challenge. Do you challenge him for Cause, or peremptorily?

Prisoner. For Cause.

L. C. Baron. That which you assign is no Cause.

Then Sir Dennis was sworn upon a Voir Dire, with respect to his Freehold; as all the others were, before they were either Challenged, or Sworn in Chief.

Sir J. Fekyl. Sir, Have you a Freehold in this City?

Sir D. Dutry. Yes.

Sir J. Fekyl. To what Value?

Sir D. Dutry. About Ten Pounds a Year.

Prisoner. My Lord, There has been a Suit depending between us.

Mr. Att. Gen. If they talk of a Suit, they must prove it by Record.

Prisoner. His Name is Dennis; and they have given me a Pannel with barbarous Latin. In my Copy of the Pannel, he is return'd by the Name of Dionysius; that is not the same Name.

Mr. Ward. The Prisoner observes, that in the Pannel he is return'd by the Name of Dionysius, when his Name is Dennis.

Sir J. Fekyl. He is to have a Copy of the Pannel; and it is not to be put into English for him.

A

Mr.

Mr. Ward. But we say, that is not *Latin* for *Dennis*.

Sir J. Jekyl. Sure no one will argue, but that *Dionysius* is the Proper *Latin* Name for *Dennis*.

L. C. Baron. You offer no Cause of Challenge.

Prisoner. I hope I prove his Name is return'd in the Pannel *Dionysius*.

L. C. Baron. It is so ; and that is *Latin* for *Dennis*.

Prisoner. No, it is not. *Dennis* is a Saint in *France*, and *Dionysius* is a Saint in *Italy*. They are two different Names, and of different Countries.

L. C. Baron. *Dionysius* is *Latin* for *Dennis*. If you don't challenge him peremptorily, he must be sworn.

Prisoner. I alledge, that we fell out about Seven Years ago : And that his Name is not *Dionysius*, as it is wrote in the Pannel. And in my former Pannel he was put down *Knight*, and in this *Baronet*.

L. C. Baron. These Things are nothing, except the Suit ; and that you must prove.

Mr. Hungerford. As to the Distinction of the Two Saints, I do not meddle in it. But I suppose Sir *Dennis* can tell whether he is a Knight, or a Baronet. But as to the Saints, whether the Nominal ones Abroad, or the Pretended ones at Home, I let them alone.

Prisoner. You allow'd this Challenge the last Time.

Mr. Att. Gen. You challeng'd him peremptorily.

Mr. Ward. He was stiled Knight in the last Pannel.

L. C. Baron. That don't appear to us. You must either challenge him peremptorily, or he must be sworn.

Prisoner. I must do what you order ; but I think it very hard. Then I Challenge him.

Cl. of Arr. Sir John Scott, Kt.

Prisoner. I Challenge him.

Cl. of Arr. Sir Daniel Wray, Kt.

Prisoner. I don't Except against him.
Then he was Sworn.

Cl. of Arr. Sir W. Chapman, Kt.

Prisoner. I Challenge him.

Cl. of Arr. Joseph Webb.

Prisoner. I Challenge him.

Cl. of Arr. Robert Adams.

Prisoner. Was you upon the Grand Jury, that found the Indictment against me ?

Mr. Adams. No.

Prisoner. I Challenge him.

Cl. of Arr. Robert Ashurst.

Prisoner. I Challenge him.

Cl. of Arr. Joseph Bishop.

Prisoner. I Challenge him.

Cl. of Arr. Thomas Boucher.

Prisoner. I Challenge him.

Cl. of Arr. Joseph Brooksbank.

Prisoner. I Challenge him.

Cl. of Arr. Nicholas Benoit.

Prisoner. I Challenge him.

Cl. of Arr. John Child.

Prisoner. I Challenge him.

Cl. of Arr. Joseph Chamberlain.

He was Sworn.

Cl. of Arr. John Casebert.

Prisoner. He was upon the Grand Jury that found the Bill against me ; and I Challenge him for that Cause.

Cl. of Arr. Robert Wood.

Prisoner. I Challenge him.

Cl. of Arr. Isaac Cailovell.

Prisoner. He don't write his Name as it is in the Pannel. I could never find this Gentleman out, by all the Enquiry I could make.

L. C. Baron. What is the Mistake ?

Prisoner. It is wrote in the Pannel *v* Consonant, and he spells his Name with a *w*. And it is in the Pannel a single *l*, and he writes it with double *ll*.

Then Mr. Cailovell being ask'd, said he wrote his Name with a *v* Consonant, as in the Pannel ; but with a double *ll*.

L. C. Baron. That don't alter the Pronunciation. It is the same Name.

Prisoner. I Challenge him.

Cl. of Arr. Thomas Davis.

He was Sworn.

Cl. of Arr. John Dodson, Esq ;

Prisoner. I Challenge him.

Cl. of Arr. William Dewick.

Prisoner. I Challenge him.

Cl. of Arr. William Dell.

Prisoner. I Challenge him.

Cl. of Arr. John Davis.

He was Sworn.

Cl. of Arr. Joseph Emmes.

He was Sworn.

Cl. of Arr. John Farr.

He was Sworn.

Cl. of Arr. Thomas Gouge. Prisoner. I Challenge him.
 Cl. of Arr. Thomas Geering. Prisoner. I Challenge him.
 Cl. of Arr. Joseph Goddard. Prisoner. I Challenge him.
 Cl. of Arr. Robert Gill. Prisoner. I Challenge him.
 Cl. of Arr. Henry Greenway. Prisoner. I Challenge him for Cause.
 He is return'd upon the Pannel Greenway ; and his Name is Greenaway : That is a different Name.

Sir J. Fekyll. How are you usually called ; Greenway, or Greenaway ?

Mr. Greenaway. I am most commonly called Greenaway.

Then he was set aside.

Cl. of Arr. John Glasbrook. *He was Sworn.*
 Cl. of Arr. John Goodlad. Prisoner. I Challenge him.
 Cl. of Arr. John Gore. Prisoner. I Challenge him.
 Cl. of Arr. Henry Hankey. Prisoner. I Challenge him.
 Cl. of Arr. Lawrence Hatsell. Prisoner. I Challenge him.
 Cl. of Arr. Robert Hackshaw. Prisoner. I Challenge him.
 Cl. of Arr. Benjamin Hooper. Prisoner. I Challenge him.
 Cl. of Arr. Jonathan Hicks. Prisoner. I Challenge him.
 Cl. of Arr. Jeremiah Jennings. Prisoner. I Challenge him.
 Cl. of Arr. Thomas Jordan. Prisoner. I Challenge him.
 Cl. of Arr. William Kent. *He was Sworn.*
 Cl. of Arr. Richard Levitt, Esq; Prisoner. I don't Except to him.
 Sir J. Fekyll. I Challenge him for the King.
 Cl. of Arr. James Lamb. Prisoner. I Challenge him.
 Cl. of Arr. Thomas Lingard. *He was Sworn.*
 Cl. of Arr. Stephen Lee. *He was Sworn.*
 Cl. of Arr. John Lane, Esq; Prisoner. I Challenge him.
 Cl. of Arr. John Lane. Prisoner. I Challenge him.
 Cl. of Arr. Richard Lindsey. Prisoner. I don't Except to him.
 Sir J. Fekyll. I Challenge him for the King.
 Cl. of Arr. John Mabew. *He was Sworn.*
 Cl. of Arr. Henry Mallett. *He was Sworn.*

Then they were counted ; and the Twelve Sworn were
 J U R O R S.

Sir Daniel Wray, Kt.	}	John Glasbrook.
Joseph Chamberlain.		William Kent.
Thomas Davis.	}	Thomas Lingard.
John Davis.		Stephen Lee.
Joseph Emmes.		John Mabew.
John Farr.		Henry Mallett.

Then Proclamation was made, as is usual in those Cases.

Prisoner. I pray that George Flint, a Prisoner in Newgate, may be sent for ; and may be near me during my Tryal.

L. C. Baron. What is he in Newgate for ?

Prisoner. For a Fine.

L. C. Baron. Then he may be sent for.

Which was done accordingly.

Cl. of Arr. Francis Francia, Hold up your Hand.

Which he did.

Gentlemen, You that are sworn, look upon the Prisoner, and hearken to his Cause.

He stands indicted by the Name of Francis Francia, of London, Merchant : For that he being a Subject of our most Serene Lord GEORGE, King of Great-Britain, France and Ireland, Defender of the Faith, &c. Not having the Fear of God in his Heart, nor weighing the Duty of his Allegiance ;

giance ; but being moved and seduced by the Instigation of the Devil, as a false Traitor against our said Lord the King, his Supreme, True, Natural, Lawful and Undoubted Lord ; withdrawing that Cordial Love, and true and due Obedience, Fidelity and Allegiance, which every Subject of our said Lord the King towards Him ought to bear ; and designing, and traiterously intending, the Government of these Kingdoms, under our said Lord the King duly and happily establish'd, to Change and Subvert ; and our said Lord the King from the Title, Honour, Royal Estate, Empire and Government of these Kingdoms to depose ; and our said Lord the King to Death and final Destruction to bring ; and the Person in the Life of King James the Second, pretended to be Prince of Wales, and after the Death of the said late King pretending to be, and taking upon himself the Stile and Title of King of England, by the Name of James the Third, to the Crown, Royal Estate, and Dignity of King, and to the Government of this Kingdom to advance : The First Day of September in the Second Year of the Reign of our said Lord the King, and at several Days and Times as well before as after ; falsely, maliciously, devilishly and traiterously, did compass, imagine and intend, our said Lord the King, now and then his Supreme, True, Natural, Lawful and Undoubted Lord, from the Title, Honour, Royal Estate, Empire and Government of these Kingdoms, to depose and to Death and final Destruction to put and bring ; and the said Person, in the Life of the said King James the Second, pretended to be Prince of Wales, and since the Death of the said late King pretending to be, and taking upon himself the Stile and Title of King of England, by the Name of James the Third, to the Crown, Royal Estate and Dignity of King, and to the Empire and Government of this Kingdom, to exalt. And that he the said Francis, to accomplish and bring about the said Treason, and traiterous and devilish Intention, did traiterously meet, propose, consult, conspire, and agree with divers other Traitors, to the Furors unknown, to raise Insurrection, Rebellion and War within this Kingdom, against our said Lord the King, and in Favour of the said Person, in the Life of the said King James the Second, pretended to be Prince of Wales, and since the Death of the said late King taking upon himself the Stile and Title of King of England, by the Name of James the Third. And that he the said Francis Francia, for the more effectual Compleating and Perfecting the said Treason and traiterous Intention, did propose, consult, conspire and agree with divers other Traitors, to the Furors unknown, to require, sollicite and procure, from divers Foreigners, and others, in the Kingdom of France, Arms, Ammunition and Money, to assist and help in the said War. And that he the said Francis Francia, did traiterously compose and write, and caused to be composed and written, several traiterous Letters, notifying the Intentions and Resolutions of him the said Francis Francia, and the said other Traitors, to move and levy the said War ; and requiring Aid in the said War, of the said Foreigners, and other Persons then in France. And the said Letters so composed and written, and caused to be composed and written, did traiterously send, and caused to be sent, to Parts beyond the Seas, to be delivered to the said Foreigners, and other Persons in France, and caused and procured them to be delivered accordingly ; against the Duty of his Allegiance, against the Peace of our said Lord the King, His Crown and Dignity, and against the Form of the Statute in that Case made and provided.

Upon this Indictment he hath been Arraigned and hath thereunto pleaded Not Guilty : And for his Tryal hath put himself upon God and his Country ; which Country you are. Your Charge is to enquire, whether he be Guilty of this High Treason whereof he stands indicted, or Not Guilty ? If you find that he is Guilty, you are to enquire what Goods or Chattels, Lands or Tenements, he had at the Time of the High Treason committed, or at any Time since. If you find him Not Guilty, you are to enquire whether he fled for it. If you find that he fled for it, you are to enquire of his Goods and Chattels, as if you had found him Guilty : If you find him Not Guilty, nor that he did fly for it, you are to say so, and no more ; and hear your Evidence.

Mr.

Mr. Cowper, Jun. May it please your Lordship, and you Gentlemen that are sworn. The Prisoner at the Bar, *Francis Francia*, stands indicted of High-Treason; in intending to alter and subvert the Government of these Realms, happily establish'd under His Majesty King *GEORGE*; to depose His Majesty, to bring him to Death, and to place the *Pretender* upon his Throne.

The Indictment sets forth, That for this Purpose the Prisoner, the First of *September*, in the Second Year of the Reign of His Present Majesty, and at several other Days and Times, at *London* in your County, traiterously compassed and imagined, to depose and kill His most Sacred Majesty, and to place the *Pretender* on his Throne.

And that for the more Effectual Performing such his Intentions, he did meet, propose, consult and agree with several other Traitors; to raise Rebellion and War within this Kingdom, against His Majesty, and in Favour of the *Pretender*. And that he did solicit Men, Arms and Ammunition, from certain Foreigners and others in *France*, to assist him in that Rebellion. And that he did write and cause to be written several Letters, intimating this Resolution, and requesting the Assistance of such Foreigners and others.

The Indictment charges further, That he wrote and composed such Letters, and caused them to be wrote and composed; and procured them to be sent and deliver'd for that Purpose. And this, Gentlemen, is laid to have been by him done, contrary to the Duty of his Allegiance, against the Peace of our Sovereign Lord the King, his Crown and Dignity, and against the Form of the Statute in that Case provided.

Gentlemen, To this Indictment the Defendant has pleaded that he is Not Guilty. If upon Calling our Evidence for the King, we shall prove this Case upon him; it will become your Duty to find him Guilty of the Charge.

Sir *J. Fekyl*. May it please your Lordship, and you Gentlemen of the Jury, I am of Council with His Majesty: And Gentlemen, it is my Part to Open to you the Substance of the Charge against the Prisoner at the Bar; and the Nature of the Evidence we shall offer to prove that Charge.

The Prisoner stands indicted of the first Species of High-Treason, mentioned in that Ancient Statute 25 *Edw. III.* that is, Compassing and Imagining the Death of the King.

The Overt-Acts alledged in the Indictment, to manifest that Traiterous Design of the Prisoner, are Three.

He is charged with Consulting and Conspiring, with other Traytors, to Levy War against the King, in Favour of the *Pretender* to His Majesty's Crown:

With Conspiring and Agreeing to Solicit and Procure Assistance, from Foreigners and others in *France*, to carry on that War:

And further, With writing Traiterous Letters, notifying his and his Accomplishes Resolution to Levy that War; and requiring the before-mentioned Assistance; and Sending those Letters into Foreign Parts for that Purpose.

These are undoubted Overt-Acts of the High-Treason charged upon him.

To make good this Charge, we shall show, That about Three or Four Years since, there was a Correspondence begun between the Prisoner and *Abbot Butler*, an Ecclesiastick of *Cambray*. That Correspondence began on the Occasion of a Law-Suit in *England*; wherein one *Mrs. Butler*, a Relation of that Abbot, was concerned; which was recommended to the Prisoner's Care. But some Time after (a Gentleman, whose Name it will be necessary to mention in the Prosecution of this Cause) *Mr. Harvey* of *Combe* took upon him to make use of that Correspondence, in order to transmit and receive Letters to and from that Abbot; and also to the Duke *D' Aumont*, by the Means of the Prisoner.

Mr. Harvey, for some Time, made use of the Prisoner only to convey those Letters forward and backward, under the Prisoner's Cover, directed to one *D' Aulmay*, alias *Payen*; who had married a near Relation of the late Duke of *Ormond*; to be communicated by *D' Aulmay* to the Abbot, or the Duke *D' Aumont*. But it seems, the Prisoner having gained a Knowledge of the Tendency

dency of Mr. *Harvey's* Correspondence, (which was a Treasonable one) he himself soon after came to partake of the Guilt.

As it was at first a Correspondence between the Prisoner and the Abbot, and afterwards between Mr. *Harvey* and the Abbot, under Covers ; so afterwards, Mr. *Harvey* made use of the Prisoner himself, to Correspond with D' *Aulmay*. And in those Letters, you will find, that the Prisoner does not enter into the Correspondence, as a Matter that he was Transacting only as for Mr. *Harvey* ; but shews a great Concern in it himself : He is Importunate for Assistance to the late Rebellion from *France* ; Impatient for its Coming, and Anxious for the Success.

The Evidence we shall offer to you, to show that this Correspondence was thus carried on, will be this.

Informations being given to a Noble Lord, (then Secretary of State) of a Treasonable Correspondence carried on by Mr. *Harvey*, by means of the Prisoner ; there was a Warrant issued to take the Prisoner, and seize his Papers. And upon the Execution of that Warrant, Letters directed to the Prisoner, and his Copy-Book of the Letters wrote by himself, and an Original Letter of Mr. *Harvey's*, were found in the Prisoner's Custody, and will be produc'd to you ; and these were own'd and admitted by the Prisoner.

The Letters themselves plainly speak the Nature and Traiterous Effect of this Correspondence, begun by Mr. *Harvey*, and carried on with the Participation of the Prisoner. And Gentlemen, My Lords the Judges will tell you, that it is not Couching such a Correspondence in the Cant of a Law-Suit, (as in the present Case) or otherwise, that will screen an Offender from Publick Justice, in case a Traiterous Correspondence can be made manifest. If that would evade the Justice of the Law, it would be impossible for Traitors to be brought to Punishment. But that which puts this out of all doubt, is, That the Sense which is put on these Letters by us, and by the Indictment ; that very Sense, or Construction, has been put upon them by the Prisoner himself. For we shall lay before you the Examination of the Prisoner before the Secretary of State. In that he admits, that the Subject-Matter of the Letters wrote by D' *Aulmay* to him, to be communicated to Mr. *Harvey*, was the Design of the Pretender's Invading the Dominions of His Majesty. And those Letters being one Side of the Correspondence, (I mean that which came from Abroad) serves to evince or demonstrate the other Part or Side of the Correspondence, which came from hence.

I shall not enter into the Particulars of the Letters ; or state and reason upon Matters in writing, without having them first read, whereby to lay a Foundation for Observing upon them. But the Letters will be read to you. And We who are the King's Council, don't desire you to put any forc'd or strain'd Construction upon them. Nay, we desire you to put no other Construction upon them, than what the Prisoner himself has done already.

I shall say nothing to you, Gentlemen, to aggravate the Nature of the Offence. I rather chuse to appeal to your Judgments, than to excite your Passions.

All that is desired of you, is, to give your best Attention to the Evidence ; and to do Justice, and discharge your Consciences.

Mr. *Att. Gen.* May it please your Lordships, and you the Gentlemen of this Jury ; I am also of Council against the Prisoner at the Bar. The Indictment has been at large opened and explained by Mr. Serjeant *Jekyll*. The Prisoner is charged with High-Treason, in Compassing and Imagining the Death of His Majesty, in order to set the Pretender on the Throne. The Overt-Acts laid, are, Conspiring to Levy that War and Rebellion that broke out lately ; and in Applying to *Aliens*, and others in *France*, for Men and Money for Carrying it on.

It is notorious, that Preparations were making many Months for the Rebellion that broke out in *Scotland*, September 1715, under the Earl of *Marr* ; and in *Northumberland* in October after, under Mr. *Foster* ; and the like were design'd at *Oxford*, *Bath*, &c. in October 1715. And Men were list'd and sent down for those Purposes ; as hath appear'd on the Trials of the Persons who have suffer'd for those Treasons.

The

The Conspiracy was carry'd on with great Secrefy : And tho' it had been long in Agitation in Favour of the Pretender ; yet was not publickly known, till His Majesty (upon the 20th of July 1715) was pleased to acquaint his Parliament, That He had certain Notice of the Pretender's Design to Invade this Kingdom ; and that at the same time there were great Preparations here, to affist that intended Invasion.

The Defendant lives in *Plow-Yard*, in *Fetter-Lane*, and goes for a *Jew*. When the Duke *D'Aumont*, as Ambassador from the *French King*, in the Year 1713. was here, the Prisoner came acquainted with the Abbot *Butler*, called the *Vidame* of *Cambray*, and from that Time he corresponded with him. The Abbot had a Relation of his Name, *Barbara Butler*, who had a Suit at Law depending here, which he recommended to the Care of the Prisoner ; and that I believe might be the Beginning of the Correspondence between them. There is a Gentleman that has been named, *Mr. Harvey* of *Comb*, He also then contracted an Acquaintance and Familiarity with the Duke *D'Aumont*, and Abbot *Butler*, and corresponded with both. These Correspondencies first began in the Queen's Time, and appear to have been carried on with great Secrefy and Caution, which induce a Belief they were then Criminal ; but I don't mention this, as if what was done in the Queen's Time would affect the Prisoner upon this Indictment, for it is laid only for Treason committed against the King. These Correspondencies were carried on, from the going away of the Duke *D'Aumont*, till the Prisoner was seized, which was occasioned in this Manner :

My Lord *Townshend*, then Secretary of State, was diligent in his Enquiries, and on the 16th of September, 1715. had a private Information given him, that Letters constantly came by the Post from *France*, to *Francia*, and *Mr. Harvey* ; from the Duke *D'Aumont*, Abbot *Butler*, and one *Payen* alias *D'Aulmay de Cou-lange* ; and that the Subject of the Letters related to the Pretender, and that intended Invasion.

His Lordship was cautious, and did not immediately seize the Prisoner, but stay'd the coming in of Two Posts from *France*, and gave Orders for stopping all Letters directed to the Prisoner, to see what further Discovery they would make, and having received further Information by those Letters, on the 19th of September, 1715. his Lordship made his Warrant to *Joseph Smith*, one of the Messengers, to apprehend *Francia*, and seize his Papers. He having received the Warrant, went, together with *Wilcox* another Messenger, (who is since dead) to the Defendant's House, and there seized his Person, and at the same Time his Copy-Book of Letters. And it is extraordinary to find therein entred the Copies of any Letters relating to a Matter of this Nature. When they seized that Book, he told them there was nothing in it, and that it was only his Copy-Book of his Letters to his Correspondents. They seized also several Original Letters, wrote from *France* to him by *D'Aulmay* alias *Payen*, which will be read to you. They then seized also in his Custody an Original Letter of *Mr. Harvey's* to Abbot *Butler*, dated January 9. 1714. which was sent to *Francia* to be transmitted beyond Sea ; but it seems *Francia* opened it out of Curiosity, or by Accident, and kept it. In it were Figures for Names and Things, which he well understood. The Prisoner was on September 22. 1715. Examined before both Secretaries of State, and the Copy-Book of Letters was shewn him, and he owned it to be his Book, wherein he entred the Letters of his Correspondency, and that the Entries were made by himself or his Son. *D'Aulmay's* Letters were also shewed to him, and he owned that they were those that he received, and were found in his Custody.

He at first seemed to be open and ingenuous, and the Secretaries of State then thought him to be so. He told them in particular when the Correspondence began, how long carried on by covering *Mr. Harvey's* Letters ; and when altered, and the Correspondence carried on only by *Francia* ; and that the Subject of the Letters wrote to him by *Payen*, was, the Design of the Pretender to invade His Majesty's Dominions ; and he named Persons, who were intended in them by initial Letters of their Names or Titles. That *M. H.* was *Mr. Harvey*. My *DD* the Duke of *Ormond* ; *M B.* Lord *Bolingbroke* ; *Dd.* the Duke *D'Aumont*. He also explained

plained Mr. *Harvey's* Letter, and the Figures therein. That 22 was the Duke *D'Aumont*; 6 the late *French King*; 17 the *Tories*; 8 the *Pretender*; and 9 His Majesty King *GEORGE*; and signed his Examination, and was sent back in the Messenger's Custody. But it appearing after, on further perusing of the Letters, that he had not been ingenuous, but had concealed a great Part of what he knew, he was further examined, and then changed his Note, and thereupon was committed to *Newgate*.

He was here twice before, in Order to be tryed; the first Time he was advised by his Council, (and he was in the Right to follow it, and take all the Advantages the Law allowed him) to insist, that in the Copy of the Indictment delivered to him, there was a Mistake of an *I* for an *A*, and therefore he had not had a true Copy of his Indictment; and thereupon the Tryal was put off. The next Time he came, he made use of another Privilege the Law allows him, and challenged so many of the Jurors, that there did not appear besides enough to make a Jury. There were Accidents afterwards, which occasioned the putting off the Tryal twice by the King's Council, some of the Witnesses being abroad on His Majesty's Service.

The Indictment charges the Prisoner with compassing and imagining the Death of the King: And it's plain, a Conspiracy to levy War, to dethrone or to deprive the King of his Liberty, is an Evidence of imagining his Death; for the War necessarily tends to that End. That this Transaction which he was concerned in, was a Design to have a Rebellion raised here, and to bring in the *Pretender*; we don't doubt but we shall give you Satisfaction of, when we produce the Letters, and you will observe that the Prisoner hath so explained them: And if he had not, every Body must so understand them.

The Correspondence began in the Year 1713, and continued to the Time he was taken, which was on September 19, 1715. And so far we may read the Letters in the Queen's Time, to shew the Nature and Beginning of it. At first he carried on the Correspondence, only as a Correspondence between Mr. *Harvey* and *Butler*, by covering Mr. *Harvey's* Letters, and having the Answers sent under Cover to him; what he wrote in the Covers, he has entred in his Book; for Mr. *Harvey* was cautious not to let his Letters go openly to and from him. And so for a good while Mr. *Harvey's* Letters were brought to *Francia*, which he covered and directed to *Butler* or to *D'Aulmay*, sometimes by that Name, and sometimes by the Name of *Payen*, and sometimes by the Name of *Coulange*, which is a way used by many in *France*, to take the Name of the Place where they live instead of their Surname. While the Correspondence was carried on by covering Letters, *Francia* in his Covers wrote those Matters that demonstrate he was privy to the Correspondence, and you will understand it by Mr. *Harvey's* Original Letter.

Mr. *Harvey* is not before the Court, and therefore we shall not meddle with him more than is necessary, to shew that while the Correspondence was carried on under *Francia's* Covers, *Francia* well knew the Subject Matter of the Correspondence, and many Times gave Cautions to have to do with discreet Persons, and to make use of People that do not babble.

The Correspondence was carried on thus till about June, 1715. and then the Way of Corresponding was changed. For Mr. *Harvey* was advised to be more careful, and not to write himself; but whatever was wrote, it was agreed should be wrote to and by *Francia*. And so the Correspondence was carried on between *D'Aulmay* and him, to the Time of the Prisoner's being apprehended. We have Entries of Letters of his for a considerable Time in his Copy-Book; and it is surprizing to me, and will be so to every Man, that a Man should enter Copies of Letters that carry such an Evidence of Crimes in the Writer. In one of the Letters entred in the Copy-Book, he writes to *D'Aulmay*, dated April 7. 1715. "to be cautious, to avoid giving Umbrage to those in Power; and says, "when I have any Thing particular to write to you, I will do it by a strange Hand, "and will sign *Jacques Cbrétien*. Take Notice of this, and provided you let me "know you received this Letter without its having been opened, I shall be easy,

From that Time there is no Entry of *Francia's* Letters in the Book, but we have a Chain of Letters from that Time wrote by *D'Aulmay* to *Francia*, in Answer to Letters written by *Francia* to him, wherein *D'Aulmay* takes Notice, "That *Francia* in

“ his Letters had complained that the Invasion was delay’d ; and reproach’d those
 “ in France with Backwardness, Neglect and Indolence ; and that the Cause he
 “ knew of, would be undone for want of Care.

In the Reading the Letters, we shall first produce that of Mr. *Harvey*, dated
January 9. 1713. to *Abbot Butler* ; which was found in *Francia’s* Custody ; with
 his Explanation of it ; by which it will appear, he was fully acquainted with
 the Subject of the Correspondence, while he cover’d Mr. *Harvey’s* Letters : And
 after that we shall produce the Letters from and to *Francia*, in the Order of
 Time they were written.

It is remarkable, that the Correspondence was so close, that scarce a Post
 pass’d without Letters from the one or the other.

The first of Mr. *Francia’s* Letters that we shall produce, is dated *March 14.*
1713. He writes to *D’Aulmay* ; “ and desires to know what was in the Story of
 “ the Marriage between the Pretender and One of the *Arch-Dutchesses*. For it is
 “ Essential to the Interest of your Wife : She was a *Butler*.

“ *D’Aulmay* answers that, *March 20. 1715.* and writes that no Mention was made
 “ of late of the Marriage of the Pretender : And that he was of Opinion, that
 “ would not be a Sure Way to bring his Affairs to a Happy Issue. But that a Par-
 “ ty-War (that is, among our selves) would be much more to his Advantage.

March 10. *Francia* writes, “ That there was a Letter from the Duke *D’Aumont*,
 “ which ’tis wish’d may succeed better than the former ; which have not been
 “ answer’d, tho’ entirely for the Affairs. Besides I am (by the way) to tell you,
 “ that Persons of 50 or 60 Thousand Crowns a Year, can’t with Prudence run
 “ the Hazard of Losing such Estates, unless more Encouragement be given
 “ them. And that the Misfortunes of a Certain Person are more owing to
 “ their being neglected on your Side of the Water, than to the Party that is
 “ against him : So that if this continue, your Wife must lose all Hopes.” This
 demonstrates, that the Matter solicited for, was Criminal, for which the Per-
 sons concerned might forfeit their Estates ; and is plainly a Soliciting for Suc-
 cours.

April 2. 1715. *D’Aulmay*, in Answer to this, writes, “ He had communicated
 “ the Complaints in *Francia’s* last Letter to the Duke *D’Aumont* ; and was assured
 “ All should be amended.

March 17. 1713. *Francia* writes to *D’Aulmay*, “ He should be glad if he could
 “ find Means to satisfy Mr. *Harvey*.----That to deal with him as has been
 “ done, is no good Policy.

April 8. 1715. *Francia* writes to *D’Aulmay*, in Answer to his of the 20th ; and
 tells him “ He is satisfy’d ; And consequently, We are now to expect every
 “ Thing from your Side of the Water.

April 18. He writes again to *D’Aulmay*, “ That Affairs are here in such a Si-
 “ tuation, that great Precaution must be used, to avoid giving Umbrage to
 “ those who are in Power. When I have any Thing particular to write to you,
 “ I will do it by a strange Hand, and will sign *Jaques Chrétien*. Take notice of
 “ this : And provided you let me know you received this Letter, without its ha-
 “ ving been open’d, I shall be easy.

April 24. 1715. *D’Aulmay* writes to *Francia*, “ That his Letter came safe to
 “ Hand ; and bids him be easy. If Mr. *Harvey*, in these troublesome Times,
 “ should think fit to make use of Mr. *J. Chrétien*, he may.

These Letters of *Francia’s* are enter’d in his Copy-Book : But from this Time
 there are no Entries in the Copy-Book. Which is not to be wonder’d at ; but
 rather that they were enter’d so long. But we have many Original Letters from
D’Aulmay (alias *Payen*) to *Francia* ; which appear to be Answers to Letters writ-
 ten by him : And by what of them is repeated in the Answers, it appears in his
 Letters great Solicitations were for the Pretender’s Coming, and great Uneasi-
 ness express’d at the Delay. And therefore, to quiet the Conspirators in Eng-
 land, *D’Aulmay* gives frequent Assurances that all Things were preparing.

August 7. 1715. which was after His Majesty had Notice of the Invasion de-
 sign’d, and had acquainted the Parliament with it ; *D’Aulmay* writes to *Francia* :
 “ You are in the right to inveigh against the Indolence you reproach us with ;
 “ but be persuaded, ’tis only so in Appearance. I even hope, that by this time
 “ you have convincing Proofs of it ; and that Suitable Returns are made to the
 “ good Dispositions, on your Side : And that at last God blessing the Just Cause
 “ of

“ of Our Friend, will let him gain his Suit : At least, Assistance and powerful
 “ Sollicitations shall not be wanting.

This needs no Explanation. The Suit of their Friend, appears plainly to be the Invasion of the Pretender.

August 10. 1715. D'Aulmay, under the Name of Payen, acquaints Francia, that He received his of the 5th Instant. Says he, “ Pray be easy ; before it be long
 “ you will be contented. The Chief of the Name of our Friend the Abbot
 “ arrived here on Tuesday-Night, in good Health. He is very well pleased ; and
 “ has Reason to be so. He is preparing to return Home with all Expedition ;
 “ and to take his Friends with him, to pass the Vacation there. I am this Mo-
 “ ment going to wait on him ; and design to make One in the Voyage with
 “ him, or to be with him soon after his Departure.

August 21. D'Aulmay writes again to Francia, in Answer to Two of his, of the 12th and 15th Instant ; “ Our Friend's Cause will soon be ready (God willing)
 “ to be try'd : All Preparations are making for it. The Friend who is related to
 “ my Wife has read your Two Letters, and is mightily pleased with them.

August 24. He writes again, “ pressing him not to let a Post go, without let-
 “ ting him know All that passes relating to the Cause of our Common Friend.
 “ And he takes notice that he had been so busy, that he had not had Time to
 “ write to Treacher, but would do it suddenly.

This shews the Difference between D'Aulmay's own Suit against Treacher, and the Pretender's Design, which he calls the Cause of their Common Friend.

August 28. D'Aulmay, under the Name of Payen, writes to Francia, acknow-
 “ ledging the Receipt of his of the 22d Instant ; and saith, “ If I could venture
 “ to acquaint you with the Particulars of All that passes on the Affair which
 “ you know of, you would be more quiet than you appear to me to be, and
 “ would accuse us of Negligence less than you do. I know there are favoura-
 “ ble Moments, which 'tis dangerous to let slip. But will you not grant too,
 “ that 'tis the Part of Prudence to foresee all Inconveniencies ; and to take
 “ proper and sufficient Measures to enable us to surmount them all ? This is what
 “ We are doing : Be satisfied of it ; and that your Friends are more earnest and
 “ ardent than ever, to procure you all the Satisfaction you can wish. Have Pa-
 “ tience therefore yet a-while.

Septemb. 3. Payen to Francia : “ I receiv'd this Instant yours of the 29th past.
 “ We have at last the Misfortune to lose the Greatest of Kings. The German Jour-
 “ ney might be very proper ; I wish it may be perform'd ; the rather, because
 “ for the Reasons that you know of. Our Preparations have been a little su-
 “ spended, but not at all broken ; Things going on always better and better.
 “ My(a)DDand(b)MB are in a House within Half a League of this Town, which
 “ a private Person has lent them ; where they Receive all their Friends, with
 “ whom they go to Dine and Sup every Day. They are Both in perfect Health ;
 “ and think quite differently from what They are reported to think : That is
 “ to say, They are what They ought to be ; You may assure your Friends
 “ of this.

Septemb. 6. D'Aulmay writes to Francia ; “ I have just now received your Let-
 “ ter of the Second Instant. I desire you to continue to write to me directly ;
 “ and if you had some Trusty Hand, other than your own, and that of your
 “ Son, you would do well to employ it. I believe also, that a Cypher for
 “ the principal Names, (which you might send me, and a Copy whereof
 “ you might keep to make use of your self) would be very necessary : For
 “ I'll avow to you frankly, that this Precaution seems to me to be very ne-
 “ cessary.

Sept. 14. D'Aulmay, under the Name of Payen, writes to Francia ; “ The Con-
 “ tents of your last without a Date were very agreeable to me, as well as to
 “ all our Friends, who give you Thanks for it. We knew already Part of
 “ what you tell us about the Cause of our Friend ; which will soon end
 “ (please God) to his Satisfaction, or all Appearances would deceive. As to
 “ my own Cause, I can't help telling you that my Fate is very unhappy, to have
 “ to do with so dishonest a Man.

Here again he distinguishes between his own Cause, and the Cause of their Friend the Pretender.

There

(a) Duke of Ormond.

(b) Lord Bolingbroke.

There cannot be any Doubt of the Subject of this Correspondence: Every body that hears or reads these Letters, must understand them to relate to the intended Invasion; and if there were any Doubt, (as there is not) Mr. *Francia's* Confession sufficiently explains them.

It cannot be expected we can produce Mr. *Francia's* Letters, to which the last are Answers, they being sent away by him to *France*; but we insist that the Answers to them take Notice of his, and of the Contents of them, with their being taken in his Custody, and owned by him on his Examination, to be those he received; and that he knew the Design of them to be, the Design of the Pretender to invade his Majesty's Dominions; is a full and sufficient Evidence to prove the Treasonable Correspondence charged in the Indictment.

The Secretary of State did right, in stopping the Letters at the *Post-Office*, which were directed to the Prisoner; but those Letters having never been in the Prisoner's Custody, we shall not offer them in Evidence.

In one of them *D'Aulmay* complains, that the Correspondence was interrupted; and afterwards in another to *Francia's* Son, he bewails his Father's Misfortunes.

It can't be pretended that *Francia* was only a Hand to convey Letters from one to another; and that the Correspondence was only Mr. *Harvey's*; and that *Francia* is only Guilty of Misprision of Treason, in concealing the other's Treason; for while he covered Mr. *Harvey's* Letters, he also wrote in the Cover those Things that demonstrate he was acquainted with the Subject of the Correspondence, and assented to, and assisted in the Treason: And the Law is plain in Case of High Treason, that he that knoweth it before it be done, and assenteth to it, is *Particeps Criminis*, and Guilty of the Treason.

What he did was not in the Dark, but knowingly and openly, and he expresses himself concerned that the Business went on no better. That is making himself a Party and a Principal.

The Method of our Evidence will be this. These Letters and Copy-Book were seized by the Messenger, who brought them to Mr. *Walpole*, Under Secretary to my Lord *Townshend*: They were laid before the Prisoner, in the Presence of both Secretaries of State: He owned the Book to be his Copy-Book of his Letters to his Correspondents; and the Letters shown him, to be those he received, and that were taken in his Custody; and that that Correspondence continued till the Time of his being taken into Custody; and that the Subject thereof was the Design of the Pretender to invade his Majesty's Dominions. We shall for the better understanding of them first read his Confession, and then the Letters; and when we have done this, we do not doubt but you will be satisfied, we shall have fully proved the Charge laid in the Indictment against him.

Mr. *Soll. Gen.* My Lord, We will call our Witnesses. Set up Mr. *Smith*.

Then Joseph Smith was sworn.

Mr. *Soll. Gen.* You was sent, I think, as a Messenger to *Francia's* House: Pray give an Account of every Thing that passed there.

Mr. *Smith.* My Lord, I have the Honour to serve His Majesty as one of His Messengers: I was appointed to attend the Secretaries Office that Day, being my Day of waiting, which was September 19. 1715. I had a Warrant delivered to me against Mr. *Francia*, but it being late I did not go to execute it that Night. The next Day I went to his House, in *Plow-Yard*, in *Fetter-Lane*; Mr. *Wilcox*, another Messenger, went with me, and went into the House first; he went up one Pair of Stairs and I staid below, and after he had been up a little Time, he called me up; and told me there was the Prisoner: He was then in Bed, and there was a Woman with him he called Wife: We told him, we had a Warrant against him for High Treason, and bad him get up. I asked him if he had any Closet? And looking about, I saw one by the Fire-Place: I opened it, and the first Thing I observed over against the Closet-Door, upon a Shelf, was a Parcel of Letters lying open in *Folio*; I saw they were in *French*, and directed to the Prisoner, and upon the Desk there lay a Paper-Book.

Mr. *Soll. Gen.* Look upon this Book; Is this the Book?

Mr. *Smith.* This is the Book; it lay upon the Desk, and I looked into it, and observed this Writing at the one End of it: He said it was his Son's Writing, and then I shut it again. I opened the Desk, and looked over the Papers; I found

found there several other Papers and Letters folded up : I took them out, and laid them upon the Desk by the others. Then I searcht the other Parts of the Closet, and laid all the Papers by the other Letters. I desired then to go up Stairs, and I did so : And a Person I saw just now in Court, his Son, went with me ; and I searched the Rooms and Boxes, and found several other Papers, and brought them down into the Chamber where the Prisoner was, with Mr. *Wilcox* ; I put up all the Papers together, and said I had taken all Things that I thought necessary, and desired to be going. The Prisoner desired to stay and drink some Coffee ; we did so, and then brought him down to a House at *Westminster*. We carried the Papers to the Office, and delivered them to Mr. *Horatio Walpole*. When I was in the Chamber with him, he seemed to be under a Concern when I put up the Book ; and I asked him what that Book was ? He said it was the Book of his Correspondence abroad.

Mr. *Att. Gen.* Is this the Book ?

Mr. *Smith.* Yes.

Mr. *Att. Gen.* You say you saw several Letters there, did you look into them ?

Mr. *Smith.* I saw they were directed to *Francia* : There was a Parcel that lay open in *Folio* ; and others that lay folded up in the Desk.

Mr. *Att. Gen.* What became of the Book and Papers after you had them ?

Mr. *Smith.* We went with them and the Prisoner, and delivered the Prisoner into a House at *Westminster* ; and then went to the Office, and staid till Mr. *Walpole* came, and then delivered the Book and Papers to him.

Mr. *Att. Gen.* Did you deliver any Papers to him but what were seized there ?

Mr. *Smith.* No.

Mr. *Att. Gen.* What is become of Mr. *Wilcox* ?

Mr. *Smith.* He is Dead.

Mr. *Cowper.* What was it that the Prisoner said about the Book ?

Mr. *Smith.* He said, That is my Copy-Book of my Correspondence abroad, it signifies nothing : I afterwards observed some more Concern than ordinary in him ; and he said to me again, the Copy-Book of my Letters signifies nothing.

Mr. *Ward.* How long had you the Book and Letters in your Custody ?

Mr. *Smith.* I received them about Six or Seven a-Clock, and I delivered them the same Day to Mr. *Horatio Walpole*.

Mr. *Hungerford.* How can you be sure this is the Book ?

Mr. *Smith.* Because I never parted with it.

Mr. *Hungerford.* Was it not out of your Possession when you delivered it into the Office ?

Mr. *Smith.* Yes then it was.

Mr. *Hungerford.* Did you set any Mark upon the Book ?

Mr. *Smith.* No.

Mr. *Hungerford.* Did he say that which was wrote in it, was wrote in it by him ?

Mr. *Smith.* He said, this is my Copy-Book of my Letters to my Correspondents abroad.

Mr. *Hungerford.* But how can you be sure this is the same Book ?

Mr. *Smith.* I made a Remark of this * Writing as he sat dressing himself.

Prisoner. Who was it that carried the Book and Papers to the Office, you or *Wilcox* ?

Mr. *Smith.* I my self.

Prisoner. I know that to be false. How soon did you go out of Town after you had lodged me ?

Mr. *Smith.* In a Day or Two.

Prisoner. Did you not go that Moment ?

Mr. *Smith.* No : Not that Day.

Prisoner. To whom did you deliver them ?

Mr. *Smith.* To Mr. *Horatio Walpole*.

Prisoner. Did you take no more Books ?

Mr. *Smith.* There were several Books in your House, but I don't remember that I carried any of them away but this.

* *George Francia's Name in large Church Text, at the End of the Book.*

Mr. *Hungerford*. Did the Prisoner own to you, that the Letters wrote in that Book were wrote by him?

Mr. *Smith*. He said, that is the Copy-Book of my Letters to my Correspondents abroad.

Then Mr. *Horatio Walpole* was sworn.

Sir *J. Fekyll*. Pray Sir, will you give the Court and the Jury an Account of this Book and those Letters; and how, and when they were brought to you?

Mr. *Walpole*. I remember the Warrant for Seizing the Prisoner was dated the 19th of Sept. and that the Day after Mr. *Smith* and Mr. *Wilcocks* came into my Room, and deliver'd to me a Copy-book and a Parcel of Letters, which they said they took at *Francia's* House. I took them and kept them by themselves, to be produc'd when my Lord *Townshend* should call for them. I remember that Night Mr. *Buckley* came into my Room, and I desir'd him to sit down and look them over with me, and accordingly, he and I look'd into them. The next Day my Lord *Townshend* sent for the Prisoner, and I carry'd in the same Book and Letters, and laid them upon the Table, and particularly the Letters, they were laid open, and my Lord examin'd the Prisoner about them. They were wrote in *French*, and directed to the Prisoner. My Lord ask'd him whether he knew the Hand of those Letters, and turn'd them all over, and shew'd him the Directions, saying, Are these directed to you? He own'd it. He own'd that he receiv'd them. My Lord ask'd him again, Is this your Book? He answer'd, It is; some of the Letters are enter'd by me, and some by my Son.

Sir *J. Fekyll*. Were they all the same Letters that were brought to you by Mr. *Smith*?

Mr. *Walpole*. The same.

Sir *J. Fekyll*. Pray look upon this Book; Is this the same Book?

Mr. *Walpole*. I am sure this is the Book: This is the same Book that *Smith* deliver'd to me, and said he took it at *Francia's* House.

Then several Letters were shewn to Mr. *Walpole*.

Mr. *Walpole*. I remember all these Letters to be the same that I receiv'd from *Smith*.

Mr. *Att. Gen.* After the Prisoner had been examin'd, what became of the Letters?

Mr. *Walpole*. I took them back again. I kept them under Lock and Key, till my Lord *Townshend* had occasion to use them, which was the same Night that my Lord examin'd the Prisoner; then I took them back, and I constantly kept them till I went to *Holland* for the *Dutch* Troops, and then I deliver'd them to Mr. *Buckley*.

Prisoner. And you can swear these are the same Letters that were deliver'd to you. By what Mark? You swear very home. What mark did you put upon those Letters, that you can swear to them?

Mr. *Ward*. Pray Sir, when they were in your Custody, Are you sure they were never deliver'd out?

Mr. *Walpole*. I am sure.

Mr. *Ward*. Do you remember one *Jones* the Gun-maker on the other side the Water, when he was under Examination? Are you sure they were not deliver'd out by Mistake to him?

Mr. *Walpole*. I don't know that they were.

Mr. *Hungerford*. Did you put any Mark on those Letters?

Mr. *Walpole*. No, I put no Mark on them.

Mr. *Hungerford*. Then how can you know them to be the same?

Mr. *Walpole*. I perus'd them several times. I remember the Hand, and Dates, and Directions.

Mr. *Hungerford*. Then probably you remember the Number too?

Mr. *Walpole*. No, I don't remember the Number.

Mr. *Ward*. Are you sure these are all the Letters that were brought to you?

Mr. *Walpole*. No, there are not all the Letters.

Mr. *Att. Gen.* We will now call Mr. *Buckley*.

Then Mr. *Buckley* was sworn.

Mr. *Att. Gen.* Pray Mr. *Buckley* look upon this Book and these Letters, and acquaint the Court what you know of them?

Mr. *Buckley*. My Lord, the Day the Prisoner was seiz'd, I came into Mr. *Walpole's* Room. He told me he had receiv'd that Book and those Letters that were seiz'd at the Prisoner's House, and desir'd me to sit down and read them with him. I did so. Afterwards, when Mr. *Walpole* went to fetch the *Dutch* Troops, he deliver'd this Book and these Letters into my Hand. Afterwards my Lord *Townshend* directed me

to look into them, and see which contain'd Passages most Criminal, and to extract such Passages, which I did accordingly out of several of them. I will look over them again, and then I can tell you whether they are the same.

Prisoner. By what Mark?

Mr. Buckley. I can tell you by that which is stronger than any Mark, I copy'd Passages out of several of them.

Then he look'd over the Letters one by one. I had every one of these Letters from *Mr. Walpole*, and I know it certainly; for that from every one of these, I extracted some Passages.

Mr. Cowper. Was you present at any time when the *Prisoner* was examin'd?

Mr. Buckley. I was.

Mr. Cowper. Were this Book and these Letters produced to him at the time of his Examination?

Mr. Buckley. He was examin'd by my Lord *Townshend* and *Mr. Secretary Stanhope*, and I was call'd in to take his Examination in Writing, accordingly I did.

Mr. Cowper. Were the Book and Letters at the time of his Examination produc'd to him?

Mr. Buckley. I can't say that, for I was intent on my Paper, writing the Examination, and looking upon the *Prisoner*, and hearing what he said. When I had written down what is in my Hand, [*holding out the Original Examination.*] I read it over to him distinctly and audibly; and he being ask'd whether he was willing to swear to it, and answering, Yes, I offer'd him his Oath: And I offer'd him a *New Testament* to swear on. He said he could not swear on that Book. But he took another Book out of his Pocket, and I swore him on that. I ask'd him whether this was true: He said it was. Then he sign'd it; and afterwards my Lord *Townshend* sign'd it.

Mr. Cowper. Is the Subscription of his Hand-Writing?

Mr. Buckley. It is.

Prisoner. You say I took an Oath? On what Book was it?

Mr. Buckley. Indeed I don't know, I believe it was an *Hebrew Book*; *Mr. Secretary Stanhope* look'd upon it.

Mr. Denton. Was he examin'd at any time after?

Mr. Buckley. Yes.

Mr. Denton. Was you present then?

Mr. Buckley. No.

Mr. Ward. How long were they in your Custody?

Mr. Buckley. From the time that *Mr. Walpole* went abroad, till he came back again, and then I deliver'd them back to him.

Mr. Ward. Were they in your Custody when *Mr. Jones* was under Examination?

Mr. Buckley. I can't tell; but I never did show them to him.

Mr. Ward. Were they not deliver'd out on that Occasion?

Mr. Buckley. No, they were not deliver'd out by me.

Mr. Ward. You say you read the Examination to him. Did not he desire to read it himself?

Mr. Buckley. I don't remember it.

Mr. Ward. Was he not refus'd to read it?

Mr. Buckley. No, upon my Soul.

Mr. Ward. Was you with the *Prisoner* in *Newgate*?

Mr. Buckley. I was with him at his own Desire; otherwise I had not gone to him.

Mr. Ward. Do you remember the Days?

Mr. Buckley. No.

Mr. Ward. How often was you with him there?

Mr. Buckley. Twice.

Mr. Hungerford. Were there any Offers made by you to him?

Mr. Buckley. I desire you would explain yourself.

Mr. Hungerford. Did you make him any Offers, that upon his signing any Paper, he should have his Liberty?

Mr. Buckley. No.

Mr. Hungerford. Did you not mention to him his giving Evidence against any other Person?

Mr. Buckley. No, upon my Soul.

Mr. Att. Gen. These Questions ought not to be ask'd. It is an Iniquity to tamper with any Man; and therefore such Questions ought not to be put. If you have any Witnesses, you may examine them.

Mr. Hun-

Mr. Hungerford. Then we will examine to it.

Prisoner. Is that the Book I swore upon? [*shewing a Book he had in his Hand.*]

Mr. Buckley. I don't know indeed; it was such a sort of Book.

Mr. Att. Gen. I don't take that to be material, if it were the *Alchoran*. He had it in his Pocket. But it is not his Oath, but his Confession that is material.

Mr. Hungerford. Taking the Book into his Hands. I understand a little *Hebrew*. This is a Book to pray by, not swear by. It is a Collection of some *Jewish* Prayers and Rituals; I believe, taken out of *Maimonides*. You had best send it the Learned *Monfalcon* in *Paris*, he is compiling some critical Observation upon the *Eastern Languages*.

Mr. Ward. Did you put any Mark on any of those Letters?

Mr. Buckley. I did on some of them.

Mr. Hungerford. Where are the Extracts you made out of them?

Mr. Buckley. I have some of them here, [*holding out some Papers.*]

Mr. Hungerford. What did you do with the Letters, after you had made those Extracts?

Mr. Just. Pratt. He tells you that he kept them till *Mr. Walpole* came back again, and then deliver'd them to him.

Mr. Buckley. Here is my Name on some of them. The two initial Letters of my Name.

Prisoner. When was that Mark made upon them?

Mr. Buckley. I don't justly remember.

Prisoner. That might be done yesterday, or since they were deliver'd out of his Custody.

Mr. Buckley. I did it while they were in my Possession, and before I deliver'd them back again to *Mr. Walpole*.

Then the Lord *Townshend* was sworn.

Sir J. Fekyll. We must desire your Lordship to inform the Court, what your Lordship knows in relation to the Prisoner at the Bar, as to the issuing out the Warrant against him, and what happen'd afterwards.

Lord Townshend. My Lord, having receiv'd Information that there was a Treasonable Correspondence carry'd on between the late Duke of *Ormond*, Duke *D'Aumont*, *Coulange* and *Mr. Harvey*, in which the Prisoner was concern'd, and was the Channel in which the Correspondence was convey'd; and that the Pretence of it was a Law-Suit, but that the Design of it was in Favour of the Pretender; and that when they talk'd of the Party, the Pretender was meant; and that they expected him to be soon here. Having reason to rely on this Information, I drew a Warrant to seize the Prisoner and his Papers. I had indeed before sent an Order to stop all Letters that came from *France*, directed to *Francia*, by which I receiv'd a Confirmation of the Intelligence which had been before given me. Upon the issuing out the Warrant, the Prisoner was seiz'd, and his Letters were brought to *Mr. Walpole*.

The next Day I sent for the Prisoner to be examin'd, and order'd *Mr. Walpole* to bring me the Papers, and sent for the Prisoner in. The Letters that *Mr. Walpole* brought in, were laid open upon the Table, and the Book lay by them. I ask'd him whether he knew the Hand, and whether those Letters were not for him? He own'd the Letters, but said he could not help what was in those Letters, and that what others wrote to him, could not make him guilty. As for what I have wrote (said he) I appeal to my Book. That is my Book, I appeal to that for my Innocency. He did not appear obstinate, and I remanded him; and at night I sent for him again, and *Mr. Secretary Stanhope* was with me; I had in that time look'd into more of the Letters, I saw several initial Letters of Peoples Names, I ask'd him the Meaning of them; and he gave me the Account contain'd in this * Examination. He seem'd in a Disposition to tell me all he knew; he gave me an Account how this Correspondence began, and was carry'd on; and then he came to explain the initial Letters that were in those Letters that were taken upon him, and in several other Letters that I had intercepted. I remanded him again that Night, having taken this Examination in my Hand.

A second Examination was taken upon *Mr. Harvey's* Letter; (*which Examination and the Letter thereto annex'd was shewn to his Lordship.*)

This is the very Letter on which I examin'd him; he own'd to me how he came to stop the Letter, and not to forward it, and explain'd all those Figures to me very distinctly. He protested that he knew no more, and made solemn Protestations that he had said all he knew, and I was almost convinc'd he had; but in

* Referring
to the Original
Examination.

the Consequence, I had reason to think he had not. But these two Examinations were taken before me, one I sign'd alone, and the other Mr. Secretary Stanhope sign'd with me. As to the First, I believe Mr. Secretary Stanhope was gone out of the Room before it was sign'd.

Sir J. Jekyll. I desire to ask your Lordship whether all the Letters that were brought by Mr. Walpole, were laid upon the Table at the time of the Prisoner's Examination.

Ld. Townshend. All that Mr. Walpole brought me were laid there, and I saw him take them back again.

Mr. Ward. I desire to ask your Lordship whether you heard that Declaration read over to him?

Ld. Townshend. I dare say I did.

Mr. Ward. Did he not endeavour to excuse himself from signing it, till he had read it himself?

Ld. Townshend. I don't remember that, I don't know that he made any Difficulty of signing it; but I am sure it could not be because he was refus'd to read it.

Prisoner. Was not there any Reluctancy in me to sign it?

Ld. Townshend. What do you mean? Have not I answer'd that already?

Prisoner. Did not you offer me some Money to sign it?

Ld. Townshend. I hope you can't say a thing of so much Infamy. After he had been examin'd, he complain'd to me of the Milery he was reduc'd to, that his Wife and Family must starve, and represented himself as if he were at loss for a Supper: I told him he had nothing to hope for, or any room to expect any Favour, but by making a clear Confession. He went on begging, and said that his Wife was starving; I do not certainly know whether it was the very Night that he sign'd his Confession or not; but I am sure it was not for that, but in pure Alms, and because he begg'd so hard, I put my Hand in my Pocket, and gave him three, four, or five Guineas, I know not which, in Charity; and it was what I never could refuse any Man that apply'd to me in that manner, and begg'd so hard. He said his Brother would not look upon him, because he was taken up for High Treason, and he desir'd me to give him something in Charity, which I did.

Prisoner. I desire to ask you whether you ever bestow'd on any body else the like Charity? Pray my Lord, name the Man under your Examination, you ever gave five Guineas to before? *[At which there being a Laugh round the Court.]*

Prisoner. I must not be laugh'd out of my Life, you did not answer me.

Lord Ch. Baron. Propose your Question to the Court?

Prisoner. I desire to know who he ever gave five Guineas to besides me?

L. Ch. Baron. My Lord says it was out of Charity.

Prisoner. And that he never refus'd any body under his Examination the Sum of five Guineas?

L. Ch. Baron. He don't say so; he says, he never could refuse his Charity to People that begg'd as you did.

Prisoner. I had less Need to beg than some others.

Mr. Ward. I have but one Question more to trouble your Lordship with, which my Instructions lead me to; and that is, whether at the time when this Examination was sign'd by the Prisoner, he was not told of its being for some particular Purpose, but that it should not be binding to him?

Ld. Townshend. He did desire that it might not be made use of against him; I told him that depended on his Behaviour, if he was Ingenuous, if he dealt frankly and fairly, and declar'd all the Truth, I would do all in my Power that he should have Mercy; I don't know whether it is proper to give my Reasons why I am convinc'd he did not deal candidly; but on the perusal of the Letters, I found he was not a bare Conveyer of them, or came by Chance to the Knowledge of what he explain'd in them, but that he wrote to, as one of the Managers: On that I sent to him again, and told him plainly, he must know more of it. He stood it out that he did not, and then I sent him to Newgate: Soon after he was committed, his Wife came, as Mr. Buckley inform'd me, and acquainted him that she was perswaded, if she could see her Husband, that she could prevail with him to discover the whole: On that I gave Directions to put him into the Messenger's Hands again, which was done; about a Morning or two after, one Curtis, who was in the same Messenger's House, brought a Letter to the Office, which he had found drop'd by his Man's Bed-side. It was directed to his Wife, and the Subject was to bid her not afflict herself, for he found better Company in Newgate than he expected, that the better Half of them were in upon the Government Account; that he had said

said nothing of Mr. *Harvey* that could hurt him, nor could he; that the Government had nothing against Mr. *Harvey*, but a general Suspicion that he was against the Government, which three Parts in four of the Nation were; and that he himself laugh'd at any thing the Government could do against him the Prisoner: When I found a Man write in his Stile, I could not but think he had not dealt ingenuously.

Mr. *Hungerford*. I would propose to the Judgment of the Court, whether it is proper to give Evidence of the Substance of a Letter without offering the Letter itself.

Mr. *Just. Pratt*. This comes in Answer to Mr. *Ward's* Question. He ask'd my Ld. *Townshend*, whether there was not some Promise that this Confession should not be made use of against the Prisoner? His Lordship gives this Account, and justifies himself, how he came to make use of it, and gives this as the Reason.

Mr. *Hungerford*. But to give an Account of the Substance of a Letter without producing it, I apprehend, is not according to the Rules of Evidence.

S. J. *Jekyll*. If the Council for the Prisoner desire the Letter to be read, it shall be read.

Mr. *Att. Gen.* Do you insist upon the Reading of it?

Mr. *Ward*. If you will read it in the proper time you may.

Mr. *Hungerford*. If in the Course of the Evidence the Letter is not read, I don't press it.

Then Mr. *Horat. Walpole* was call'd again, and the Letter was shew'd to him.

Mr. *Att. Gen.* Pray Sir, will you give an Account what you know of this Letter, and how it came to your Hands?

Mr. *Walpole*. This Letter *Curtis* brought to me, and I made this * Mark on it: He told me it was found in *Francis's* Chamber near his Bed-side, and this is the Letter.

* Showing a Mark upon the Letter.

Mr. *Ward*. There is nothing prov'd yet of its being the Prisoner's Hand, its being found by his Bed-side will not affect him.

Then Mr. *Buckley* was call'd again, and the Letter was shew'd to him.

Mr. *Soll. Gen.* Pray look upon this Paper, and tell us whose Hand-writing you take it to be?

Mr. *Buckley*. I never did see the Prisoner write but once, and that was upon my being sent to him to take a Confession he seem'd willing to make, and then I sat by him while he was Writing.

Mr. *Soll. Gen.* How long did he write then?

Mr. *Buckley*. About an Hour, and I read it over.

Mr. *Soll. Gen.* Do you believe this to be his Hand-writing?

Mr. *Buckley*. I not only saw him write then, but I have read a great deal in this Book, which Mr. *Walpole* told me, was taken at the Prisoner's House; therefore being used to the Writing in this Book, and to what I saw him write, for those Reasons, and no other, I believe this Paper to be his Writing.

Mr. *Denton*. Are not the Letters of your Name on this Letter?

Mr. *Buckley*. Yes. When Mr. *Walpole* put into my Hands all the Letters, my Lord bid me single out those that were fit to be extracted, and I did mark them that were extracted, and I always kept them in my Hands, till Mr. *Walpole* return'd, and then I deliver'd them to him: Those Letters that I extracted, I mark'd; some other Letters that were intercepted by my Lord *Townshend*, I did not mark, because they came to me at other times.

Mr. *Denton*. Did you mark that Letter?

Mr. *Buckley*. Yes.

Mr. *Ward*. Can you be positive that it is the Prisoner's Hand?

Mr. *Buckley*. No.

Mr. *Ward*. Do you rely on the Writing in the Book?

Mr. *Buckley*. By that, and by what I did see him write, from thence it is that I conclude this to be his Hand.

Mr. *Hungerford*. He attempts to prove his Hand by two Inducements, one that he saw him write, and the other is the Book; therefore let him fix on those Parts of the Book, that he takes to be the Prisoner's Hand, and to be like this Letter.

L. Ch. *Baron*. The Book is not material; it is enough for a Man to say, that he saw another write for an Hour together, and then that he believes this to be his Hand.

Mr. *Hungerford*. If that was the single Foundation, it was something; but he makes another Foundation also.

Mr. *Just. Pratt*. We are going out of the way, the Question is, Whether this shall be read? In order to that, the Method is to prove, that the Witness is acquainted with the Prisoner's Hand-writing, and believes this to be his Writing. He tells you he saw him write for an Hour. He gives you a further Reason, that it is

like some Letters in the Book. If that were laid out of the Case, the other would be sufficient without it.

Mr. *Hungerford*. A Man makes two Things the Foundation of his Judgment: his Seeing him write, and the Similitude of Hands in the Book; the most conclusive Evidence would be, the Similitude of the Hand in the Book, which others may judge of as well as himself.

L. Ch. Baron. That is no Evidence at all; Similitude of Hands is no Evidence.

Mr. *Hungerford*. I am far from thinking it is, or that there is as yet any Evidence at all. Do you believe this to be his Hand, only from your having seen him write, or from what you have observ'd in the Book also?

Mr. *Buckley*. I say that from my having seen him write, and my having seen the Entries in the Book, I believe this to be his Hand.

Mr. Just. *Pratt*. If you had never seen the Book, but had seen him write for an Hour; Could you collect from thence that this was his Hand?

Mr. *Buckley*. No, I would not affirm it.

Mr. *Hungerford*. Then it is with us, and makes it necessary to look into the Book.

Mr. Att. Gen. How come you to apprehend any one Part of the Book to be *Francis's* Writing more than the other?

Mr. *Buckley*. By my Eye-sight, and comparing it with this Letter.

Mr. Att. Gen. Is it from your Knowledge of seeing him write?

Mr. *Buckley*. Yes, and this Writing being like this Book.

Sir J. *Jekyll*. I desire this Matter may be consider'd how it stands, my Ld. *Townshend* is examin'd touching the Confession of the Prisoner, and was ask'd whether there was not hopes of Mercy given him, my Lord said there were, upon his making a frank Discovery; but he tells you the Prisoner was not entituled to Mercy, because he had not made such a Discovery, and then gives an Account of this Letter: I thought the Council for the Prisoner appeal'd to that Letter, and would have had it produc'd, to check the Evidence given by my Lord.

Mr. J. *Pratt*. Since it is gone thus far, I think it would be proper to clear this Matter.

Prisoner. I desire to know where Mr. *Buckley* saw me write for an Hour together?

Mr. *Buckley*. It was in the Messenger's House.

Mr. Just. *Tracy*. My Ld. *Townshend* was giving an Account in Answer to a Question propos'd by the Prisoner's Council, and gave his Reason why he did not think the Prisoner was frank. I did not think so (says he) because of a Letter which was found by his Bed-side. Says Mr. *Hungerford*, then that Letter ought to be produc'd.

Mr. *Hungerford*. If the Account is no more than that my Lord observ'd so upon that Letter, there is no great Harm in reading it: But I am still in your Judgment, Whether, when the Contents of a Letter is insisted upon, and repeated, and that upon Memory only, the Letter it self ought not to be produc'd?

Then ——— *Curtis* was sworn.

Mr. Soll. Gen. Look upon that Letter, Whose Hand-writing is it?

Curtis. I believe it is Mr. *Francis's*.

Mr. Soll. Gen. Have you seen him write?

Curtis. Yes.

Mr. Soll. Gen. And do you believe it to be his Writing?

Curtis. Yes.

Mr. *Ward*. How long have you been acquainted with the Prisoner?

Curtis. While he was in the Messenger's Hands.

Mr. *Ward*. How often did you see him write?

Curtis. Several times.

Mr. *Ward*. Was you in Custody at the same time when he was?

Curtis. Yes.

Mr. Soll. Gen. Where did you find this Letter?

Curtis. In his Chamber by his Bed-side.

Mr. *Hungerford*. I don't hear that he gives an Account, whether he is so well acquainted with his Writing, that he can distinguish it from any others?

Curtis. He told me it was a Letter that he had wrote to his Wife.

Mr. Att. Gen. The Letter is in *French*; we have a Translation of it; we must desire that the Interpreters who translated it, may be sworn.

Then Mr. *Boyer*, and Mr. *Ozell*, were both sworn.

Mr. *Cowper*. Did you translate the Letter?

Mr. *Boyer*. I did, and afterwards I compar'd it with Mr. *Ozell*.

Mr. *Cowper*. Is that a true Translation of the original Letter?

Mr. *Boyer*. I did make a true Genuine Translation of it, allowing for the difference of Language and Stile.

Mr. *Cowper*. Was it the best and most exact Translation you was able to make?

Mr. *Boyer*. Yes.

Mr. *Cowper*.

Mr. Cowper. Mr. Ozell, Have you compar'd this Translation with the Original?

Mr. Ozell. Yes, and I believe it to be a true Translation.

Note. That the Original Letter was deliver'd into the Prisoner's Hand, during the time that the Translation was Reading; and Mr. Flint, who was permitted to stand in the Bar near the Prisoner, assisted him in Comparing the Original with the Translation. The like Method was observ'd, when the Translations of the Letters receiv'd by the Prisoner, were read; and when the Letters wrote by him were read out of the Copy-Book, the Copy-Book was shown to him.

My Dear,

Clerk reads.

ALL I exhort you to, is, to make your self as easy as you can. I do the same, and am well, having sleep'd well last Night; and the Company here is much better than I expected; they are all Tories, and the major Part for the Government, that is sent hither for being so, according to their Informations. Altho' all should fail, and my Lord Townshend should do nothing, the Business will be at an End in less than a Fortnight. You know upon what Account I am here, which cannot disgrace me. Be therefore comforted, and do not grieve. God will assist us. I neither know, nor have said any thing against Mr. Harvey, nor can they do any thing to him, unless he has other Affairs which I know not of; therefore you may assure that Frenchman, that's false, for I know nothing against that Gentleman, which is not intirely Regular. He may only be suspected of being a Friend to the Pretender; but that was well known before; and if all who are so, were to be punish'd, above Three fourths of the Nation would suffer. Therefore I laugh at any thing they can do to me, all my Sorrow is not to be with you; and I would not see you in this wretched Place, in which you can but grieve both me and yourself. Adieu.

Mr. Hungerford. Pray let me have the Letter; I have a little French, and I would willingly see how they render the Word Tories.

Mr. J. Pratt. When did you find this Letter?

Curtis. Upon the 27th Day of November.

Mr. Soll. Gen. My Lord Townshend, Pray be pleas'd to give an Account of the Occasion that this Confession was not sign'd by both the Secretaries?

Ld. Townshend. I suppose Mr. Secretary Stanhope might be gone out of the Room.

Mr. Hungerford. I would not willingly trouble my Ld. Townshend at any other time, and therefore would take this Opportunity: I think your Lordship said, that the Letters that were stop'd at the Post-Office, were laid on the Table with the other Letters, when the Prisoner was examin'd?

Ld. Townshend. I did not say that. The Letters that were intercepted, I did first lay them before the King, and then put them into the same Hands with the other Letters.

Then Mr. Secretary Stanhope was sworn.

Mr. Att. Gen. Mr. Secretary Stanhope, we must desire you to inform the Jury what you know about the Examinations of the Prisoner, and the Confession he made?

Mr. Secret. Stanhope. I have here two Examinations; one sign'd by my Ld. Townshend, the 21st. of Sept. and the other dated the 22d. of Sept. sign'd by my Ld. Townshend and myself. I was present at both the Examinations: There has been an Account given of the First, which is perfectly Agreeable to what pass'd there, and my Name is to the Second.

There is annex'd to this Second a Letter, which we take to be Mr. Harvey's: I remember the Letter; the Hand is particular, and there are Figures by way of Cyphers. I remember very well this Letter. It has been before the Cabinet Council. It was shown to Mr. Harvey at the Council-Table; he did not deny it, but shew'd the utmost Consternation when it was shown to him; and desir'd that he might withdraw, and have the Liberty to speak to one particular Lord. The manner of his Behaviour was such, as to induce the Lords of the Council to be of Opinion, that he was inclin'd to confess what he knew; therefore they thought fit to let him withdraw, and go to the Messenger's House; but his Agonies were such, that he stabb'd himself that Night, or the next Morning.

I believe at twice we spent about two Hours in the Examination of the Prisoner, and these Examinations were taken from his own Mouth; and I can be positive there is not a Passage in them, that he did not repeat more than once or twice. The reason why my Name is to one, and not to the other, may be, because the Room where he was examin'd was next to the Room where the Council used to meet; and I believe I might be going in and out between the two Rooms, and might not be there when he sign'd it; and therefore I might not think it proper to set my Name to what I did not see sign'd: But I saw him sign that to which my Hand is set; and I don't remember that he had any Reluctancy to sign it. I read the first Examination more than once or twice to him, and did my self examine him to all the Particulars of it.

After the first Night's Examination, it is certain he behav'd himself like a Man not worth a Groat, intimating as if he did not know how to get a Supper: He represented himself in a pitiful Condition, and it was at his going out of the Room, that my Lord put his Hand in his Pocket, and gave him something, what it was, I don't know, but it was after he had sign'd his Examination; for after it, there was a good deal of Conversation pass'd between him and me. I ask'd him several Questions, as to his being in *France*, and about the Countries he came from, and ask'd him as to several *Spanish* Letters that were in the Book, and other things of that Nature.

Mr. *Ward*. Did he not desire to read over the Examinations before he sign'd them?

Mr. Sec. *Stanhope*. I don't remember that he did; but they were read over to him, and he was ask'd to every Particular by myself, some one Particular might slip; but I did examine him, I think, to every Particular, in order to have it alter'd, if he objected to it, and he did not express the least Reluctancy. I saw him set his Hand to one of them; as to the other, I can't say, because the Room was next to the Room where the Council was sitting, and I don't know but that I might be there.

Mr. *Ward*. Do you remember any thing particular that was said to him, that those Examinations should only be laid before his Majesty, and no other use made of 'em?

Mr. Secretary *Stanhope*. I don't remember any such thing.

Sir *J. Fekyll*. If he had desir'd to have read these Examinations, would you have refused it?

Mr. Sec. *Stanhope*. It never was deny'd to any Man to read his Examination before he sign'd it, where I was present.

Sir *J. Fekyll*. Nor you would not have refus'd him, if he had desir'd it?

Mr. Secretary *Stanhope*. No, God forbid.

Mr. *Hungerford*. I am inform'd that the Prisoner wrote some Letters to my *Ld. Townshend*, complaining of some other use being made of his Examinations, than was design'd?

Mr. Sec. *Stanhope*. I receiv'd some Letters from the Prisoner, but none that I thought were of any sort of avail.

Mr. *Hungerford*. Did he complain of his not being suffer'd to read them?

Mr. Sec. *Stanhope*. I don't remember it; but I am sure it was not so. If he did complain, it was without any ground.

Prisoner. I desire a Sight of the Original Letter, which *Curtis* Which was shewn said I own'd. I never wrote one Word of it; it is forg'd since: him accordingly. Any body will say it; it is not like my Hand.

Mr. *Comper*. Before the Examinations are read, I desire the Gentlemen of the Jury would take an Account in Writing of the Initial Letters and Figures they will hear read, and then will observe who are the Persons meant and intended by them, according to the Prisoner's Explanation, when he was examin'd. Gentlemen, it is necessary you should understand, who are the Persons that are intended by the Letters and Numbers. If you take them down, all the Letters will read to the Purpose.

Ld. *Ch. Baron*. Gentlemen, They desire you will take Notice of the Letters and Numbers, that are explain'd in this Examination, because you will the better understand the Letters that will be read to you: That is what they desire, and it will be for your Satisfaction.

The Examination upon Oath of Francis Francia of London, Merchant.

Clerk. **T**HIS Examinant saith, That about two Years ago, he became acquainted with the Abbot *Butler*, otherwise call'd, *The Vidame of Cambray*, at the time when the *D. D'Aumont* was here; and afterwards, viz. soon after the *D. D'Aumont* left *England*, this Examinant receiv'd a Letter from the said *Butler*, then in *France*, recommending to this Examinant's Care, a Law-suit, in which one *Barbara Butler* a Kinswoman of the said Abbot's, was concern'd; that this occasion'd a Correspondence between this Examinant and the said Abbot *Butler*, which from a little before the late Queen's Death, hath lasted till within these few Days past; during which Correspondence with the said Abbot, this Examinant receiv'd from the said Abbot several Letters directed to Mr. *Edward Harvey* of *Combe*, and convey'd back several Letters from the said Mr. *Edw. Harvey* to the said Abbot, which Letters to the said Abbot, from the said Mr. *Harvey*, were sometimes brought to this Examinant by the said Mr. *Harvey* himself, and at other times sent by Mr. *Harvey* to this Examinant.

This Examinant further saith, That at such times during the said Correspondence, as the Abbot *Butler* was at *Cambray*, the said Mr. *Harvey* usually brought or sent to this Examinant two Letters, one directed to the said Abbot at *Cambray*, and the other, either directed by Mr. *Harvey* himself to the Duke *D'Aumont* at the *French Court*; or the said Mr. *Harvey* desired this Examinant to direct the same to the Duke *D'Aumont*, the said Mr. *Harvey* telling this Examinant, that he did not send the said Letters himself to *France* openly, because he would not expose himself to be reflected on for having Friends in *France*, not that he car'd a Pin if it were known, because we were in Peace with *France*, or Words to that Effect. This

This Examinant further saith, That the Letters so delivered or sent to him by the said *Harvey*, for the said Abbot, or for the Duke *D'aumont*, were by this Examinant sent over to *France* under a Cover directed to Monsieur *D'aulmay*, alias *Payen*, at *Paris*, but about two Months ago that Method of Correspondence was changed; for the said *Payen*, instead of inclosing his Answers to the said Mr. *Harvey* in Letters or Covers directed to this Examinant, wrote only to this Examinant, but order'd him to shew to Mr. *Harvey*, or to deliver to him what he so wrote to this Examinant, which this Examinant did accordingly.

This Examinant further saith, That whereas in some of the Letters lately written to him by Monsieur *Payen*, to be communicated to the said Mr. *Harvey*, and which were communicated to the said Mr. *Harvey* accordingly, and which being taken in this Examinant's Custody, were shewn to him; there are the Letters *M. H.* and my *D. D.* and *M. B.* which seem to be the initial Letters of Mens Names; he, this Examinant, understood that the said Letters *M. H.* stand for the aforesaid Mr. *Harvey*, and my *D. D.* for the Duke of *Ormond*, and *M. B.* for the Lord *Bolingbroke*; and this Examinant verily believes that the Subject of the said Letters written to him by *Payen* to be communicated to Mr. *Harvey* aforesaid, is the Design of the Pretender to Invade his Majesty's Dominions.

Capt Die 21^o Sept. 1715.

Francis Francia.

per TOWNSHEND.

The further Examination of Francis Francia.

THIS Examinant being Sworn, says, That a Letter shewn to him, and mark'd by him, which is hereto annex'd, and is dated the 9th of *January*, 1714, and writ by Mr. *Edward Harvey*'s own Hand, was sent to him, this Examinant, by the said Mr. *Harvey*, under a Cover, in order to be forwarded to the Abbot *Butler* in *France*: And that this Examinant in opening the Cover, accidentally broke the Seal of the said enclosed Letter, which made him detain the said Letter, and not forward it, least it should be imagined that he had opened the said Letter, out of a Curiosity to read it. And this Examinant further saith, that he verily believes that by N^o 22, mentioned in the second Line in the said Letter, is understood the Duke *D'Aumont*; and that N^o (6.) mentioned in the thirteenth Line in the said Letter, and where-ever the said N^o (6.) is mentioned in the said Letter, he, this Examinant, verily believes it signifies and is meant to stand for the late *French King*: And that by N^o (17.) mentioned in the said Letter, is to be understood the Word *Tories*; and that where-ever (22) is mentioned in the said Letter, the Duke *D'Aumont* is meant. And this Examinant further saith, he verily believes that by (8) is to be understood the Pretender; and by (9) mentioned in the said Letter, is to be understood his Majesty; but that this Examinant doth not well know what 24000, mentioned in the said Letter, stands for, neither can he tell what (14) stands for, mentioned in the said Letter.

Jur. 22^o Die Sept. 1715.
Ceram nobis,

Francis Francia.

TOWNSHEND.

JAMES STANHOPE.

F

Sir

Sir J. Jekyll. Now we will read Mr. *Harvey's* Letter.

Mr. Ward. You cannot read that Letter against the Prisoner.

Sir J. Jekyll. He hath made it part of his Examination.

[*Clerk Reads.*]

Dear Sir,

The 9th of January, 1714.

WITH great Satisfaction I receiv'd yours of the 12 your Stile, and the next time I write unto (a) 22 I will be sure to write on your behalf, just as you mention, and I wish it may have the Effect you propose; but I remember very well the Advice you formerly have given me, that your great ones are good at words and fair promises, but slow at performing, if Ever; therefore as I take you to be my Friend, I shall lay out no more Money till I am repaid what (b) 22 was pleased to promise me long agoe should be remitted me if the Fau—en had not done it on notice I meane the 130: 4—0 so long due, itt being about halfe I have bin out of Pocket, and for my good will am sufficiently scandalised as a friend to (e) 22, and Pentionar to (d) (6) nay and you from tyme to tyme have assured me it should be done, and still itt is the same, and so is like if you see itt not done.

Now if you please only to remind (e) 22 to send me a Bill if he pleases for the 130: 4—I shall be obliged very much to you, or otherwise I see it is lost, and you only doe give me faire words, which really is not like a true Friend, for I am sure I have not, or ever will omitt any one thing to serve (f) (6) (g) 22 nor you pay'd or not, itt shall not trouble so I have (b) 22 Esteem wee are now in a hurry on Chosing of Parliament Men, and how those things will goe, God above best dos knows; but this I will affirme were those that are to Chuse lesse to them selves to Chuse no Money from Corte threats, nor any other indirect means, used all would be out of sight on the (i) 17 side; and as it is, I hope all will doe well if (k) (6) and (l) 22 sticks to their true Friends, and on no account forgett them and all their good intentions. I desire you to lett (m) 22 know, if my Life lay att stake, I cannot get 30 such Hovnds as I dare send to his Friend the Co—t of To—ovs he desires but by March I hope I may, my good Friend Mr. B—ne that you mention in your Directions, has given me two of his best Bitches; they are fovre Years Hunting, and they shall be in Whelp a're I take them; and one young one I dayly will look out, tho' it is a thing quite out of my way, but to serve (n) 6 or (o) 22 I will do any thing tho' to the hazard of my Life, and all I have.

I have got for (p) 22 two as fine and good Gray-hovnd Bitches as can run, and as handsome; the red and white one is Three Years Olde, the other black and white, and but Two; and one Covple of Stag-hovnds, the Bitch is entired, the other but 11 Months old, large enough, and of the Queen's Hovnds breed; I have also a very fine Hovnd of Blood-kind, fit for a Harbering-Hovnd, and would run up to any Hounds; he is but 9 Months old, and if (q) 22 sends any one over with your Ambasadore all shall be given him, or by any Token, I will send them to Dover on notice: As to Horses, here is a Stone-horse I think will please; he is a Bay, with a Blace down his Face, but by any till liked I dare not, so that must depend on (r) 22 Pleasure, and if any I have, or can gett, or here

(f) The French King.
(g) Duke D'Aumont.
(h) Duke D'Aumont.
(i) Tories.
(k) The French King:
(l) Duke D'Aumont.

(m) Duke D'Aumont.
(n) The French King.
(o) Duke D'Aumont.
(p) Duke D'Aumont.
(q) Duke D'Aumont.
(r) Duke D'Aumont.

(a) Duke D'Aumont.
(b) Duke D'Aumont.
(c) Duke D'Aumont.
(d) The French King.
(e) Duke D'Aumont.

here of, I will, and I will also freely send in my own Charge, one to helpe by as many as (s) 6 or (t) 22 shall please to command me; but this, as things

pray order things
so as not to give
offence to (u) 22.

now Stands, must be done with Caution; why would you mention byeing of Stuffs to (w) 22, he will fancy I have some self Interest in mind; I told 14 at dyner, that (x) 22 was his humble Servant; he assured me he was his real Friend, I mean (y) 22 and would write to him and would remind him of yov; I dyne with him to morrow; press (z) 22 to think of his Friends, It will be of Service I am sure to (a) (6) all looks well, for (b) (8) and in my Heart I think better than ever (c) (9) every day looses himsele, and for the 24,000 it makes for (d) (8) and (e) 6 I am.

Mr. Attorney-General. We will now show the Nature of this Correspondence, by their sending Letters to and again, and show when he came into it himself.

Mr. Ward. Are you a going to offer any Letters?

Mr. Attor. Gen. Yes, out of his own Book.

Mr. Ward. We must humbly submit it to your Lordship's Judgment, whether they can offer any of these Letters in Evidence, the Charge of the Overt-Act is general, That he wrote several Treasonable Letters: Now a Confession that there were several Treasonable Letters past, might support that Allegation, or they may give Evidence in general, that he did write such Letters. But we must be in your Lordship's Judgment, whether they can produce any particular Letters, which are every one of them Overt-Acts themselves, and are not laid in the Indictment.

We think the Law has guarded the Life of a Man by the Stat. 25 *Edward III.* That tho' the Intention is the Crime, yet that must be declared by Overt-Act or Deed, which must be Charged in the Indictment. And the late Laws since the Revolution, says, Nothing shall be given in Evidence, but what is expressly laid in the Indictment. Now if this be allowed of under such a General Charge, to prove such a Number of Facts, which are not Charged particularly in the Indictment, then all the Security of that Law will be eluded, and a Man will be no more able to make a Defence, than if it had been laid in general, That he Conspired the Death of the King; or it had been laid, That in order thereto, he had been guilty of several Treasonable Practices.

We insist that they can't under this Allegation give any Evidence but what is correspondent to it, as any Confession or Proof in general; but they can't enter into any distinct Overt-Act, which ought to be laid, and can't be given in Evidence unless expressly laid in the Indictment. If that Act has any meaning, it is to avoid any such Artifice as this; and it obliges them that are concerned for the King to specify in the Indictment the Overt-Act they will go upon.

Mr. Hungerford. My Lord, I think we have an Objection to the reading these Letters that cannot be got over. The Law hath in all Ages guarded the Life of the

(s) French King.
(t) Duke D'Aumont.
(u) Duke D'Aumont.
(w) Duke D'Aumont.

(x) Duke D'Aumont.
(y) Duke D'Aumont.
(z) Duke D'Aumont.
(a) The French King.

(b) The Pretender.
(c) King George.
(d) The Pretender.
(e) The French King.

the Subject against Prosecutions for High-Treason, and with a great deal of Reason: The Offence is great; the Prosecutions supported with great Power and Influence, and the Consequence great to the Party concerned; for it is not only the Loss of his Life, but the Ruin of his Family and Estate; his Family must be infamous and his Estate forfeited; therefore the Law hath guarded the Life of the Subject, in a more particular manner, against these Prosecutions, than against any other Capital Offences.

Before that happy Law, 25 *Edw. III.* The Prosecutions in Cases of High-Treason were such, that no Man could not be safe against them. There was scarce any thing a Subject could do, even any thing that did but give the Umbrage of Offence, but might be drawn into the compass of High-Treason. In Truth, the Definition or Description of High-Treason before this Act, is so loose that it gave a colour for this Proceeding. It was among other things, *Si quis aliquid egerit vel agi procuraverit ad seditionem domini Regis vel exercitus sui, &c.* And in pursuance of this Notion of High-Treason, Imprisoning an Officer of Justice, and Officers cheating Soldiers of their Pay, Killing a Person going to Lift himself, &c. were before this Act adjudged High-Treason. And I can shew that some of those hard Cases happen'd the Circuit before the Act. And therefore the Legislature thought fit to ascertain what Offences should be Treason for the Future. And our Historians remark, that from the Time of this Law, the Sword that before hung by a slender Thread over the Heads of the Subjects, was then removed; and for this Reason likewise the Parliament is called *Benedictum*.

It is true, that the bare Compassing, or Imagining the Death of the King is Treason, and it ought to be so; for in that precious Life the Common Weale, the Happiness of all the Subjects, is eminently concerned. But this Act of Parliament hath provided, that such Compassing, &c. shall be proved by Overt-Act, that is, not by Inferences, strained Constructions, or Rhetorical Aggravations, and the like, but by plain Proof of Matter of Fact. And I am bold to say, the Intent of this Law was perverted for some Ages, by laying the Charges of High-Treason so loose, that the Party could not tell how to apply his Defence: And of this, and other Kinds, there had been several irregular Prosecutions; such as those of Col. *Sidney*, My Lord *Ruffel*, &c. And for these Reasons the late Act for regulating Tryals, &c. hath provided, that no Evidence of an Overt-Act shall be given but what is specially laid in the Indictment: And such a Certainty was intended, that the Party might know certainly and exactly to what Points to apply his Defence.

If it should be admitted that what is done in this Indictment is sufficient to answer this Act, the Intent of it will be eluded: For the Intent is, That the Criminal shall know how to apply his Defence. The Offence in this Case is supposed to be in the Letters; Must not therefore the Letters, or the Substance be set forth? For my Part, I think they must, or they cannot be given in Evidence. I can produce very ancient Authorities to this Purpose: And as to the Modern ones, besides that in Dr. *Sacheverell's* Case, I have one in my Eye, which is Mr. *Attorney's* own Authority (for which I shall always have a great Regard) in the Indictment against *Gregg*, which was a Prosecution of Mr. *Attorney's*; there the Letter was set out at length.

Mr. *Attorney-General*. That was not in my Time; I was not Attorney then.

Mr. *Hungerford*. I beg Mr. *Attorney's* Pardon; but he has been in and out so often, that I may have been easily led into the Mistake.

I have another very great Authority, and that was in the Case of Dr. *Sacheverell*: The Question was put to all the Judges for their Solution, Whether in all Informations and Indictments, for Offences in Speaking and Writing, the Words ought not to be particularly mentioned? This was the Question proposed, and it was answered, that it ought so to be: Your Lordship's Answer was, That you was of the same Opinion with your Brethren. You, my Lord, Mr. *Justice Tracy*, agreed in the same Opinion, and so did the Eleven Judges then present; which was, That the Words supposed to be criminal, whether written or spoken, must be expressly specified in the Indictment, or Information. This I am sure is the greatest Authority that can be in any Case: It is the Authority of all the then Judges of *England*, who were but Eleven, the Lord Chief Justice *Holt* being then

then lately dead ; so my Lords, to justify this Objection, we have the Presidents on our Side particularly of *Coleman, Fitzbarris, Gregg and Sidney* ; in all which Cases the Papers supposed to be Criminal, or the Substance of them, are inserted in the Indictment. We have the Authorities for us, Ancient and Modern, and we have the Reason of the Thing for us. It being the highest Reason and Justice, that as the Prisoner is now to have some Days before his Tryal the Names of his Judges, viz. the Pannel of the Jury, so he should be apprized of his Charge with so much Certainty, as to know how to apply his Defence ; and we don't doubt therefore but we shall have your Lordship's Opinion in Favour of our Objection.

Sir J. Fekyll. We may offer this Book and these Letters, notwithstanding this Objection. Mr. Ward did not go so far as Mr. Hungerford, that it is necessary to set them forth *Verbatim*. As to that, I believe it was never done in any Case : And as to *Coleman's* Case, those Letters are not set forth ; but it is alledged, that they were wrote to procure the Aid and Assistance of the *French King*, as it is here said, that the Prisoner's Letters were to desire Assistance from *France* to the Rebellion here. If it be necessary to set forth the Words in the Case of a Misdemeanour for a Libel in the Ordinary Courts of Justice, it is because the Libel is the Crime ; but in the Case of a Treasonable Correspondence it is otherwise ; for there the Letters are not the Crime, but the Overt-Act of the Treason, which is the Manifestation of the Crime. Besides, let it be considered what Evidence are we going to offer ; we offer the Letters sent to him in answer to the Letters wrote by him, and to require us to set them out in the Indictment is impossible ; when we make it part of the Charge that the Letters were sent to *France*, it is to mock us to call upon us to produce those Letters themselves.

Mr. Ward seemed to admit, that the Clause mentioned by him in the Statute 7 Will. was grounded upon the 25 Edw. III. For that old Statute doth require, that a Man be attainted by Overt-Act ; and what doth 7 Will. do in that Case ? No more then to make plain what the Law was before : For the Words are, that no Evidence shall be given of an Overt-Act that is not expressly laid in the Indictment ; and from thence the Prisoners Council would infer, that no Letters ought to be given in Evidence that is not laid in the Indictment ; No, the Act requires only that the Overt-Act be expressly laid in the Indictment. Not that the Evidence shall be expressly laid in the Indictment. All that the Court is to consider as to this Matter is, whether the Overt-Act is not sufficiently laid in the Indictment ; it will not be doubted, but that writing Letters to excite Rebellion is an Overt-Act. Then the Question is, whether this Indictment doth not expressly alledge this Overt-Act. The Words in the Indictment are these ; *Quodque predictus Franciscus Francia, ad dict' Prodicion' & Diabolic' & Proditor' Intencon' & proposit' pred' ulterius perimplend' perficiend' & ad effectum redigend' postea scil' eodem prima Die Septembris, Anno supradicto nec non diversis al' diebus & vicibus tam antea quam postea apud London' pred' in parochia & Ward' pred' malitiose diabolice & proditorie composuit & scripsit & componi & scribi causavit separales proditorias Epistolas notifican' intention' & resolution' ipsius Francisci Francia & pred' al', proditor' Fur' pred' adhuc ignot' ad bellum pred' contra dictum Dominum Regem nunc movend' &c.* This is surely an express laying the Overt-Act of which these Letters are the Evidence.

I have been looking upon the Case of my Lord Preston ; which tho' it was before the Statute of 7 Will. yet my Lord Preston was not without the Assistance of Council, tho' he was not allowed them in Court. It is there laid, that he wrote several Letters to inform the *French King* what the Forces of the Kingdom were ; and the Indictment goes on to show the Purport of those Letters. But in that Case the Letters are not particularly set forth : And yet that was never made an Objection at his Tryal, or before Judgment. In that Indictment is charged his writing Letters, and they are described, and that we have done. This we think is sufficient, that is, that we are bound to lay the Overt-Act expressly, but not the Evidence of that Overt-Act.

Mr. Attorney-General. This is a surprizing Objection ; we admit there must be an Overt-Act laid in the Indictment, and that is all that the Law requires ; we must

must set it out so that we may apply our Evidence to it: And the Meaning of the Statute is, that when you lay one Overt-Act, you must not prove another.

The Instance that is given by the Serjeant is very strong, and every Body remembers *Coleman's Case*, the writing Letters is an Overt-Act; but it is not necessary to set them out, that being the Evidence of the Overt-Act. In *Gregg's Case* there was but one single Letter which was set out, and that was stop'd at the Post-House.

In the Case of Libels they must be set out; and that was the Opinion of the Judges in *Dr. Sacheverell's Case* in Proceedings at Law: But the Course of Parliament was held by the Lords to be otherwise. We have charged that he agreed to write Letters; that he did write them, and send them; and now they would have us to set out those Letters that are sent beyond Sea: And if that were Law, it would be impossible to convict any Man of a Correspondence Abroad, because the Letters are sent Abroad.

If it was charged in the Indictment, that he wrote to great Numbers of Men; it would not be necessary to set out the Names of those Men; this is a Matter we don't need to labour much; for this last Statute has not altered the Law, as to the laying the Overt-Act, but only as to the Proof, that when you lay one Overt-Act, you can't prove another. I don't know that it could have been done before; so that that Act, as to this Matter, was only a Declaration of what the Law was before.

Mr. Solicitor-Gen. We think none of the Cases instanced prove what is insisted upon in this Case. That Case of *Coleman* is mistaken, for the Letters in that Case are not set forth particularly, only the Subject Matter and Nature of them, as is here done.

They can instance no Case where the Indictment is for writing Treasonable Letters, importing a Treasonable Correspondence, that ever they were set out in the Indictment; and to what a Length would such an Indictment be carried, if it should be done in this Case?

Col. Sidney's Case is against them; for there was a whole Volume wrote by him, and there was nothing put into the Indictment but the Substance of a very little Part; and that was *Col. Sidney's* own Objection: Says he, *Am I to be found Guilty for a little Part that is cull'd out of the rest; when if the whole was put in, by comparing the whole together, it might not be possible to collect any Treason from it?*

As to *Dr. Sacheverell's Case*, that is quite different from this; for that was in the Case of a Libel, where the Offence properly consists in the Expression. But even in the Case of Libels, I must beg leave to deny that the particular Words must be set out in the Indictment; for a Libel may be set out in Latin, which is the better and safer Way; and then if you set out the Substance, it is sufficient. And if you may set it out in Latin, it can't be true that you are bound down to the particular Words, for Latin Words and the English Words can't be the same.

The Act of Treasons say, No Evidence is to be given but of the Overt-Act laid in the Indictment. Now what is that Overt-Act here? It is writing Letters, which is specially express'd, and the Substance of them set out, which shews them to be Treasonable. The Inconvenience objected is nothing, unless it shall be suppos'd that the Prisoner may have wrote so many Treasonable Letters that he can't recollect them all.

Besides, it is to be consider'd, that all these Letters import a Correspondence, and so are to be consider'd as many, but as one Overt-Act, it is entire, and it is unreasonable as well as unnecessary, that the whole Correspondence should be set out. Therefore we think we have done what is sufficient, and that they can't give one Instance of a Case where the Treason consisted in writing many Letters of Correspondence, that the Letters themselves were set out. For the Design of the Law before mention'd, was no more than that it should not be lawful to lay one Overt-Act, and give Evidence of another.

The Treason is, the Prisoner has imagined the Death of the King; and the Overt-Act is, he has wrote several Letters, that is expressly and specially laid; and then to distinguish these Letters from all others, the Substance of those Letters are set out, notifying his Intentions to raise a Rebellion in this Kingdom, and inciting those in Foreign Parts, to aid, assist and joyn with him.

But

But this Objection may receive another Answer, and that is, that there are two other Overt-Acts, besides his writing of Treasonable Letters, which are conspiring, consulting, and agreeing to raise a Rebellion and Insurrection in this Kingdom, and soliciting Aid and Assistance from *France*: And these Letters are very good Evidence to prove those Overt-Acts; for I believe it will not be deny'd, but that these Letters are Evidence of a Conspiracy, and therefore if they could not be read in Evidence to prove the writing Letters, because they are not set out in the Indictment, yet they may be read as Evidence to prove a Conspiracy.

Therefore we insist that we are right both in point of Reason and of Precedent.

Mr. *Ward*. My Lord, I beg a word or two by way of reply; They say we have not mentioned one Case where the Treason is grounded upon Letters, where they have been set out in the Indictment; I believe they can't show one Case where it has been otherwise; we insist upon the Case of Colonel *Sidney* and of *Fitzharris*.

Colonel *Sidney's* Objection was, That they had not set forth the whole Book; but they had set forth entire Paragraphs, and that is what I insist they should have done in this Case.

They would have it believed, that the Act of Parliament 7 *Will.* is nothing, and that the Law stands as it was upon 25 *Edw. III.* It was taken to be a great Point gained when that latter Act was pass'd, and I am sorry it is like to have so little Effect. But we insist that what is now offer'd hath all the ill Effects that were before the making of the Act. It is not that a Man must be supposed to have wrote so many Treasonable Letters, that he can't remember them; but he don't know which of his Letters may be call'd so. And it was open'd that these Letters were of such a Nature that they could not be understood without producing them. Therefore they ought to be set out, that so a Man may know which of them to defend himself against.

There is one Case like this, which is the Case of the good Name of a Man: Every Witness that is produced may be examined to his Credit; but you will not suffer particular Facts to be prov'd upon him, because he can't be prepared to maintain every Action of his Life. And that was intended in this Case; that a Man might be certain what he was to defend himself against, especially in the Prosecutions from the Crown, which usually come with a greater Weight than other Prosecutions. Agreeable to this have all the Precedents been when any thing have been founded upon Letters.

Mr. *Attorney* says, that the Letters are sent into *France*. So that they can't be produced. I did not Object that they ought to be produced. But they are going to produce a Copy-Book to prove that there were such Letters, and by that they had the same Opportunity to set them out, as if they had the Letters themselves.

There is no Inconvenience to the Crown by this Method, but the greatest Inconvenience to the Subject by omitting it; for he may have all the Letters he ever wrote brought against him, and he must off-hand give an account of them. [Mr. *Ward*, who had an Hoarseness upon him, clos'd with saying, that his Voice fail'd him, and that he could go no further.]

Mr. *Hungerford*. The Gentleman who is joyned with me in the Defence of the Prisoner complains that his Voice fails him, (God be thanked) I have no Defect of that sort, for I can speak pretty audibly, but I have a greater, for I had my Instructions but late last Night.

Mr. *Solicitor* observes, That we are not entituled to have those Letters set out either by Reason or by Precedent; as to the Reason of the Thing, I appeal to your Lordship, whether all the Laws relating to Tryals of Treasons, and some others, which are to take Effect three Years after his Majesty's Accession to the Throne, and the Death of the Pretender, have not been grounded on this great Reason, to guard the Subject against Prosecutions that have been sometimes carried on with too much Severity. And as to what relates to the present Case, that the Overt-Act should be so particularly laid, as to describe the Offence with so much Certainty as to enable the Prisoner to apply his Defence.

What is the Intent of laying an Overt-Act at all, but that the Defendant may suit his Defence to it. If it is intended only that you shall not give Evidence of
a dif-

a different Overt-Act, as the King's Counsel would expound it, that will be of little avail to the Prisoner. It is of late grown to be the Practice to lay the Treason, to be in Conspiring the King's Death, and the Overt-Act, to be Conspiring to Levy War, though by the way, that is making one Article of the Stat. of 25 *Edw. III.* redundant and useless; for if every Intention of Levying War doth imply an Intention to kill the King, there was no need of making Levying of War a distinct Species of Treason at all, for at that rate it was comprehended in the former. And as to what is said, that laying the Overt-Act is a sufficient certainty of the Charge, I think not; suppose the Overt-Act laid, be Levying of War, or an intention so to do; There are several Instances of Levying War, one way may be by mustering Men, another by Seizing some of the King's Ships: These are so different, that upon a General Charge of Levying War, one perhaps may prepare to defend himself at Sea, and may be attack'd at Land; and so *vice versa*; and by the General Charge he don't know what to defend himself against. Therefore the intent of that Act must be to give a Man such a Notice of the Matter laid to his Charge that he may know how to apply himself to his Defence.

I did not insist that the Letters at large ought to be set out, but the Substance of them, or the Paragraphs in them, containing the Words supposed to be Criminal, so that a Man may know how to apply to his Defence.

As to my Lord *Preston's* Case, though he might have Council to advise him, yet in his time he could not (as the Judges had determin'd the Matter) have a Copy of his Indictment; so that he was outed of any Observations that could be made upon it. Therefore if that Indictment is in the same manner with this, it will be no Authority, for it might be irregular, as we insist this is, and yet there could be no opportunity to observe it so to be.

As to what Mr. *Solicitor* insists, That to insert the Letters at large, would make the Indictment long and tedious: For God's sake, my Lord, is there any competition betwixt the Charge of two or three Skins of Parchment, and a Man's Life?

As for the Precedents, I have here *Coleman's* Case, where the Date and Substance of the Letter is mentioned; and in Colonel *Sidney's* Case, the Title of the Book, and the Paragraphs insisted on are set out: In *Fitzbarris's* Case, the Letter is set out *Verbatim*. As to what is said of Dr. *Sacheverell's* Case, That it was only for a Misdemeanor, I am bold to say, the Question was ask'd in General, Whether in all Indictments or Informations, the Words or Writing supposed to be Criminal, should not be set out. And surely if in a Case of Misdemeanor, where only Fine or Imprisonment is the Punishment, so much certainty is required, much more certainty ought to be requisite in a Charge of High-Treason, where loss of Life, Estate, and Posterity are the Consequence of the Conviction. So that as I observ'd before, we have both Reason and Precedent with us, and they have neither of their side; and those Precedents that are of their side, were before the late Act of Parliament.

Ld. C. Baron. The Objection made by the Counsel for the Prisoner, is, that tho' here is an Overt-Act laid, yet it is not laid so expressly as it ought to be. The Overt-Act is, That he wrote several Letters to Foreigners, to move and excite a War, and sent them to Foreigners beyond Sea for that purpose. I think this is a sufficient Description of the Overt-Act, and that is as much as is required by the Act of Parliament. That Act says, That no Evidence shall be given of any Overt-Act, that is not expressly laid in the Indictment. None can say that here is not an Overt-Act expressly laid. If it is expressly laid, and sufficiently described, sure it is not necessary to mention all the Evidence that is to prove the Overt-Act, the Intent of the Law is no more, than that the Overt-Act should be sufficiently describ'd and charg'd in the Indictment. It is here so charg'd, and describ'd, the Design and Intention of the Letters is set forth, and they go to prove that such Letters, manifesting such Design and Intention, were written, and that they have laid that he wrote several Letters to move this War, then they go to produce the Letters. I am of Opinion, that they need not be more particularly describ'd, and it would be endless to set out all the Letters.

As to what Mr. *Hungerford* insisted on in Dr. *Sacheverell's* Case (which made a great noise formerly, and has made some noise now) the Question there put to the Judges, was concerning Crimes and Misdemeanors, by Writing, or Speaking

Speaking. As the Crime of a Libel consists only in the Words, and therefore they must be laid in the Indictment, he might as well have mention'd an Action upon the Case for Words. There the Words must be expressly laid, and they must be prov'd as they are laid.

But here the Crime is Compassing and Imagining the Death of the King, and the writing and sending of Letters to Foreigners to excite a War is the Overt-Act, and that Act is expressly laid in this Indictment, which is sufficient, without setting forth the Words of the Letters.

If it be laid, that a Man did consult and agree to levy War, a Time and Place must be laid, but all the Times and Places when and where he Met and Consulted, and all the Persons Names with whom he Met and Consulted, need not be mention'd in the Indictment, neither need the very Words of the Consultation be set forth. Therefore I think this Overt-Act is sufficiently laid, and, as Mr. *Solicitor* observes, if there was no other Act laid, but Consenting and Agreeing to levy War, they might prove it by Letters, altho' no Letters had been mention'd; but here the Overt-Act is more particularly describ'd, that he wrote Letters for that purpose. Those Letters are now offer'd to be read, and I think they ought to be read.

Mr. *Just. Tracy*. I am of the same Opinion; I think they have sufficiently set out the Nature of the Overt-Act, writing Letters, praying Aid of Foreigners to assist in a Rebellion. Some of those Letters are sent by the Prisoner beyond Sea, and they can't be set out; and whatever is alledg'd as certainly as the Nature of the thing will bear, is certain enough.

But it is Objected, you have the Copy-Book, and you might set them out by that. But they don't go on that only, but also on several Letters wrote to and receiv'd by the Prisoner; and to set forth all those Letters in an Indictment, is against Reason. But this is not the Matter now, for Mr. *Ward's* Objection was against reading the Letters, which were offer'd to prove the writing and sending the Letters, as charg'd in the Indictment; but instead of shewing they are not Evidence, you have run into Exceptions against the Indictment it self; for Uncertainty in not setting out the Letters particularly, which is not the Question now.

Mr. *Just. Pratt*. I am of the same Opinion; many things have been said of the great Care of the Laws to preserve the Life of the Subject. I hope we shall always take a due Care to put those Laws in Execution; but we must take Care of that precious Life, as Mr. *Hungerford* calls it, not to hazard it, by making it too difficult to Convict any Man of such a Correspondence. And if we should make such a Construction of the Act, as they contend for, it would be impracticable to Convict any Man in any Case.

The Act says, The Overt-Act shall be express'd, and is it not so here? It is writing Letters, and with an Intent to levy War against the King; so that it is mentioned that there were Letters, and the Purport of those Letters is set forth. And whatever has been said of that Case that was in the House of Lords, none of you can say, but that it is sufficient in Informations for Libels, if they are set forth in Latin, to set out the Substance of the Words. If a Man sets it out *verbatim*, he is tied up to the very Words, and by a Letter or Syllable mistaken, he may be gone: Therefore the best way is to set out the Substance only. Now what would you be the better, if you had what you ask, if there are several Letters to the same purpose? It would only be setting out the same thing over and over again. This satisfies the Meaning of the Act as fully as if they had been set out at large. But to say that a Man shall be bound to set out the Letter it self, when it is gone from him, when it is gone beyond Seas, how can he come at it? If that were to be the Case, a Man might carry on a Correspondence, and you could never Convict him.

I think this is sufficient to answer the Intent of the Act. They offer you Letters that correspond with the Indictment, and if they offer any that do not, they will not be proper to be read.

Mr. *Attor. General*. We will read our Letters as they are in Time, and shew the Nature of the Correspondence.

Mr. *Ward*. I am inform'd there are different Hands in that Book: Now whether your Lordship will admit them to read it under a general Proof of his owning it to be his Copy-Book, or whether you will not expect that that which is his Writing should be prov'd, and what is wrote by any other, to be wrote by his direction, or privity; for a small Variance in the Expression, may turn a Man out of his Life.

Mr. *Hungerford*. All that the Witnesses said was, That the Prisoner said it was his Copy-Book. Now whether he is to be affected by every Word in that Volume, is what we must submit to your Lordship; and whether they ought not to single out which were wrote by him, and which not; for his saying that is his Book, that is, the Volume is his, the Cover is his, and the Paper is his, but it will not imply that he is the Author of all those Letters.

Sir *J. Fekyll*. My Lord, when they objected to our reading the Copy-Book, they ought to have made all their Objections together; but this being in the Case of Life, I won't stand upon that.

It is plain, it ought to be read; for you observe the Letters, of which these are Copies, are suppos'd to be sent to *France*; and it is impossible to have them; then what Certainties have we touching these Letters? We have the taking the Book in the Custody of the Prisoner, and if there had been no more then it's being found in his Custody, I apprehend we might have been let in to read 'em. But it goes a great way farther; for several of the Witnesses Swear that he own'd it was his Copy-Book of his Letters.

Let's consider how this Evidence would have been, if it had been given to every Letter in particular. If we had produc'd one single Copy of a Letter, and he own'd that was a Copy of a Letter wrote by him, will any one doubt but that it might be read? No, the Evidence say that he own'd this to be the Copy-Book of his Letters.

Mr. *Just. Tracy*. Where the Court is in no doubt, we must not spend our Time in arguing Points that have nothing in them.

Ed. C. *Baron*. It is no matter whether any of them are of his Hand-writing or not, I think they may be read.

Then the Original Letters and the Translations were shewn to Mr. *Boyer*, and to Mr. *Ozell*, who prov'd them to be true Translations.

[Clerk reads.] This is directed to *Francis Francia*, and dated *Paris Feb. 26. 1715.*

Sir *J. Fekyll*. This is dated at *Paris, Feb. 1715*, but that is in our Stile 1714.

[Clerk reads.]

SIR,

THE base Dealing of the *Sieurs Treacher* and *Robinson* with me, made me always believe that you would not otherwise bring them to Reason, than by pressing them without Mercy. Since you have taken the Trouble to begin, be pleas'd to continue to the last the same Attention to my Concerns which you have had hitherto, and never consent to any Accommodation till they have remitted not only my Disbursements, as you tell me by your last of the 18th Instant, but also the whole of what may come to my Share, either in Money or Wine, supposing there remains any unfold, which I cannot believe. As for the fourth Share I have in the Fifty odd Hampers, which I bought for them of my Friend, the Count de *Sillery*, if, in order to enter upon an Accommodation, you should content your self with their Consigning into the Hands of Mr. *Harvey* the 2500 and odd Livres disburs'd, be perswaded, Sir, that to get the Remainder, you'll find your

your self under the necessity to begin anew, to give your self the same Trouble which you have taken hitherto. Therefore while you hold them, I beg the favour of you to make an end of the Matter with them at once, and in order thereto, not to give them any Quarter. They have rendered themselves unworthy of it upon all Accounts. If in this matter you think the Interest of the Chevalier (Sir Thomas) Hammer, Speaker of the last Parliament, may be useful to you; he does me the Honour to be one of my Friends: Visit him from me; and I flatter my self he will readily grant you his Assistance, when you have inform'd him how the Case stands, and of the unfair Dealing of those Merchants towards me. I am so sensible of Mr. Harvey's Favours, that I would do any thing to shew him my Gratitude. Acquaint me therefore with the true State of his Affair with the (a) D. D. and write to me about it in such a manner that your Letter may warrant my speaking; after which I shall do my best to procure him the Satisfaction he desires; be pleased to assure him of it from me. I hope that e'er it be long, you will acquaint me with the Conclusion of my Affair; in the mean time, I still assure you that 'tis not possible for any one to be more perfectly than my self, Sir, your most humble and Obedient Servant,

D'Aulmay.

Sir J. Jekyll. We read this only for the sake of the Postscript, which we will read presently.

Prisoner. This is not a True Translation.

Ld. Ch. Baron. What is your Objection to the Translation?

Prisoner. There is not one word true in it.

Ld. Ch. Baron. Who do you depend on to Translate it for you?

Prisoner. Upon Mr. Flint.

Ld. Ch. Baron. Tell us your Objection to the Translation; tell us in any one material Part wherein the Translation don't agree with the Original.

Flint. One can't carry it in ones Head.

Prisoner. I hope you will not take it for a True Translation when it is False.

Ld. Ch. Baron. We shall if you don't shew wherein it is False.

Sir. J. Jekyll. We will read the Postscript, let them show any Mistake in that.

[Clerk Reads.]

As I have Reasons of Private Concern to know what passes in the Country you live in, you will sensibly oblige me in informing me of it now and then. Be perswaded of my Discretion, and that the State is no ways concern'd in my Curiosity; nothing raises it but the Concerns of my Wife and her Family, who is Irish.

Prisoner. That is wrong Translated.

Ld. Ch. Baron. How do you Translate it?

Flint. You will oblige me sensibly to inform me of the same. Be perswaded of my Discretion, and that the State has nothing in my Curiosity: The Interest of my Wife, who is Irish excites me.

Sir

Sir J. Jekyll. That is to the same effect as we read it. We will now read a Letter from the Prisoner to D'Aulmay, out of his Copy-Book.

[Clerk Reads.] Paris. Mr. D'Aulmay de Coulange.

London, March ^{3d}/_{14th}, 1714.

I Received the Honour of yours of the 26 past. I shall no ways spare the Sieur Treacher, but prosecute him to a final Judgment, which cannot be 'till July. He makes an Apothecary's Bill, sets down the Wines that are sold, for the most part, at half a Crown *per* Bottle, but I shall prove him the contrary. I am very sorry this Business should go so far, but it is according to the Laws of this Country, where we have no need of Sollicitations; without which he will, within that Time, be certainly adjudged to pay. You must in the mean time transmit hither the Original Paper you have of your Partnership in the Wine; and without flattering you, a Letter of Attorney; for a Letter of Order will not be sufficient. You may leave a Blank for the Name of your Attorney, which Mr. Harvey shall cause to be fill'd up as he shall think fit: But if you come to this Town before the Tryal, as you told me, you may avoid all this. I shall take the Care I have promised you without any question. As for the Business of Mr. Harvey with the (a) D. D. the Matter is, that he has disburs'd about 200*l.* Sterling: And that altho' the (b) D. D. had sent to pay him what he had advanced, it happens that the Person whom he intrusted with it did not do it: Therefore, if there were Means to give the said (c) D. D. to understand, without hinting that it comes from hence, that 'tis not just Mr. Harvey should be so long out of Pocket, that would undoubtedly have the desired Effect; for which I would, in particular, be very much obliged to you, &c. As for News from this Country, I learn sometimes more in the *Paris Gazette* than here, where the greatest Part of the House murmurs to see the *Low-Church* flourish. The latter are very eager for a War, but they want the Emperor and Money. 'Tis strongly reported, that a Match is very forward between the Prince who is at Lorrain, and one of the Arch-Dutcheffes: Let me know what's in it, since that's essential to your Wife's Interest. If, as I doubt not, an Ambassador comes hither, I desire you to send me, by one of his Domesticks, 20 Ells of fine *Ras-de-St. Maur*, very black, and at the cheapest Rate, and order the Bearer to receive the Account, or acquaint me with it, that I may remit it to you. Forgive, I beseech you, this Trouble, and believe me with a great deal of Devotion.

Prisoner. He that commits a Fault in any essential Matter, may do so in the rest. They have opened all my Letters at the Post, and they have made this Book for me; there is not one Word of my writing.

(a) Duke D'Aumont.

(b) Duke D'Aumont.

(c) Duke D'Aumont.

[Clerk

Clerk reads.]

This is directed to Francis Francia, and dated

Paris, March 20. 1715.

S I R,

I Received yesterday the Honour of your Letter, dated the 14th Instant ; I confess to you that it is a very melancholy thing for me to be obliged to give you so much Importunity upon the account of a Knave, from what you wrote to me in your former. I hoped a speedier Conclusion of my Affair. Notwithstanding which, you tell me we must still wait till the Month of July. This is a very long Delay : But if there be an absolute Necessity for it, we must e'en submit. Be that as it will, I beg the Favour of you, Sir, not to give any Quarter to such People who deserve none, for their Dishonesty which they shew in its full Latitude. As for the Papers I have, I shall send you such as will be necessary for you, as soon as you shall write to me for them. But as for a Letter of Attorney, I have signed a general, and very extensive one, on the 7th of August last, which is as particular and as strong as possible ; there is a Blank for the Name, and it was sent to Mr. Arthur at London, by Mr. the Chev. Cantillon of Paris. The said Mr. Arthur having made no Use of it, you may get it out of his Hands and use it in your Name, or in the Name of such a Person which you, and Mr. Harvey shall think fit to pitch upon. I believe it may be sufficient, and that the said Mr. Arthur will make no difficulty to deliver it to you when you shew him this Letter. However, I would cause Mr. Cantillon to write to him if it were necessary.

You may assure Mr. Harvey, that I shall do my utmost to procure him Satisfaction in the Matter you write to me about, without exposing him to any Inconveniences. I have followed the Court too long to be ignorant how to deal with our Grandees.

Flint.] It is how to deal with our Lords.

Clerk reads.] I shall endeavour to know precisely the time of the Departure of the Marquis d'Allegre, who is to go Ambassador to London ; and I shall charge somebody in his Retinue with the 20 Ells of black Ras de St. Maur, which you ask of me ; if there be any thing else for your turn, let me know it. As you tell me you learn the News of England in the Paris Gazette ; So I * you that I learn from you the Marriage of the Chevalier de St. George with the Arch Dutcheffs.

Prisoner.] Is it Chevalier de St. George there ? It is not so in the Original.

Cl. of Arr.] It is Ch— de St. G—.

Mr. Att. General.] That is Chevalier de St. George.

Mr. Ward.] That is no part of the Key that was given by the Prisoner.

Sir J. Fekyll.] Read it as it is.

Mr. Hungerford.] Let it be read then without a Comment.

Mr. Ward.] I wish the Jury take sufficient Notice, that some of these Letters are not wrote by the Prisoner, but only directed to him.

Cl. reads.] I learn from you the Marriage of the Ch— de St. G— with the Arch Dutcheffs. 'Tis true, there was some talk of it when the Peace was made with the Emperor, but since that Time no mention has been made of it. That in my Opinion would be no proper way to bring his Affairs to a happy Issue. A Party War would best suit with his Affairs. God is above all ; but I hope still, neither do I believe my Hopes altogether ill grounded. I shall be glad in the mean time to see what Turn Affairs will take before I cross the Sea. Wherefore I still desire you to inform me. I assure you, Sir, That I am more than any body else in the World,

Your most humble and

most obedient Servant,

D'AULMAY.

* Torn in the Original.

Sir. 7. Jekyll.] The former Letter from *Francia* desires to know what there is in the report of the Marriage of the Prince at *Lorrain*, with the Arch-Dutchess. This Letter in Answer says, It is true, there was some mention of it about the time of the Peace with the Emperor; but he is of Opinion, That a Party-War would be more advantageous.

Clerk reads.]

Paris, Mr. D'Aulmay De Coulange.

S I R,

London, March $\frac{1}{2}$ 1715.

BY my last of the $\frac{1}{4}$ Instant, I gave you an Account of my Proceedings against the *Sieur Treacher*, which I again hereby confirm to you; and that I shall get you * between this and July, or he shall fly his Country. Here is a Letter for Mr. le (a) D.D. which, 'tis wish'd, may succeed better than the former, which have not been answered, though entirely for the Affairs: Besides which, I must needs tell you by the Bye, That Persons of 50 or 60 Thousand Crowns a Year, cannot with Prudence run the hazard of losing such Estates, unless more Encouragement be given them. You will be perfectly understood if you say this to some Person familiar with that Lord, or to himself: And I add from my self, That the Misfortunes of a certain Person are more owing to Neglect on your side of the Water, than to the Party that's against him. So if this continues, your Wife must lose all hopes.

Prisoner.] If this had not been translated wrong on purpose, and with design to take away my Life, there could not have been such a Mistake made. There is a scratch at the bottom of the S to make it an L. It was *Ses Affaires*, *His Affairs*, and it is made, *Les Affaires*, *The Affairs*.

Whereupon the Original was shown to the Interpreter, and viewed by the Court, and appear'd to be a very plain L, and not alter'd from an S.

Clerk reads.]

This is directed to *Francis Francia*, and dated,

Paris, April 2d. 1715.

S I R,

I Have deliver'd to M. le (a) D.D. the last Letter you directed to me for him; and when I insinuated that there was in it a Complaint for not having receiv'd an Answer to the former, I was particularly assured, that an Answer had been written, and even in relation to what is due to Mr. (b) H. That the same express'd a Sorrow for not having clear'd with him sooner; that some Misunderstandings had been the occasion of it: But that however he was desired to mention the exact Amount of his Disbursements, as well for the private Account, as for that of Count de *Tholouse*, and that the whole would be immediately put into the Hands of the Chevalier *Cantillon*, to be paid in London to Mr. (c) H. This, Sir, is what I was told Yesterday, and which I desire you to repeat to Mr. (d) H. assuring him, that if he thinks me proper to serve him in something else, he will do me a real Pleasure in employing me.

The Marquis d'*Allegre* does not seem yet very forward to set out for London; therefore if you are in haste for the black *Ras de St. Maur*, which you have wrote to me for, let me know which way you desire I should send it to you, and I shall do it immediately; you may depend upon it.

* A word is here wanting in the Original.

(a) The Duke d'Aumont.

(a) The Duke d'Aumont.

(b) Mr. Harvey.

(c) Mr. Harvey.

(d) Mr. Harvey.

I shall add nothing to the last Letter I writ to you concerning the Rogues our Merchants; but I shall continue still to desire you, to rid me of that Affair as soon as you can.

We have nothing new here; the Works of the Canal of Mardyke, are, by Orders from Court, redoubled. I know not what success Mr. Cadogan's Journey to Vienna has had; but we seem not to be very much uneasy at it: I have spoken, as you desired me, to the Person for whom you sent that Letter which you directed to me, and who has made me the fairest Promises in the World; pray acquaint me with what passes in relation to Mr. Prior, since his return to London; and believe me still most perfectly,

S I R,

Your most Humble,

and most Obliged Servant,

D' A U L M A Y.

Paris, Mr. D'Aulmay de Coulanges.

London, March $\frac{17}{8}$ th, 1715.

I Receiv'd the Honour of yours of the 20th Instant: I can assure you had the King himself to do with the *Sieur Treacher*, it would not be in his Power to get him adjudged to pay before the Month of July, and even in case the said (*Treacher*) do not appeal to the Chancery, which 'tis not probable he will do, because in such a Case a Merchant entirely loses his Credit, and besides he should be obliged to deposit 300 Pounds, for which I formerly arrested him, which would not at all suit with him: Therefore, Sir, be assured that I shall do all that can be done, notwithstanding all his Threats against me, for having been, says he, so bold as to sue him. I am only sorry, not to have begun sooner, and to have shewn him any Civility. Mr. Harvey and I shall be very much obliged to you, if you can find an opportunity to have Justice done him. I am perswaded, that to deal with him in this manner is no good Policy, and if ever I have the Honour to confer with you, I shall convince you, how by neglects (which however are not usual with Men of your Nation) most serious Affairs have miserably miscarried. As for News, we hear nothing but an approaching War. 'Tis even pretended that the Emperor is coming again into our Measures, but I do not believe it: nor do I see any possibility of raising Funds for a new War, at a time when People are at their Wits ends to pay the bare Interests of the Debts contracted in the last. I am very much obliged to you for your intention to send me 20 Ells of Cloth of St. Maur, by the opportunity of the Marquis d'Allegre, or otherwise by any other that may offer: I likewise offer you whatever there is in this Country, and if it were a thing of small bulk, we have often opportunities of Friends who go over into France. Our Parliament will begin their Session very soon, they meet this Day to choose a Speaker: We are going to see what will be the upshot of all the Threats. I kiss your Hands, and am—

You may desire Mr. Cantillon to write to Mr. Arthur, to deliver to Mr. George Francia the Letter of Attorney he has in his Custody; for I have reasons not to demand it my self of the said Arthur.

Paris.

Paris. Mr. D'Aulmay de Coulanges.

London, ^{March 22th,}
April 2th, 1715.

I Have the Honour to tell you that yours of the 2d Instant is come to my hands, and that I have given (a) Mr. H. an Account of the Subject Matter of your Negotiation. He is, as well as my self, the more obliged to you for it, in that we believe we still have occasion for the Continuation of your good Offices with the (b) D. D. What you say at the end of your Letter, of your having spoken conformably to what I had desired of you, is sufficient, and therefore every thing ought now to be expected from your side of the Water, that is to say Explanations, &c. I was advised in order to prevent the *Sieur Treacher's* removing the Law-suit to Chancery himself, in which Case he would become Plaintiff, to call him before that Court, that he may answer the Interrogatives I shall put to him; which I have done, and he must answer the same within a Month at farthest, and I shall pursue him close: 'Tis the most able Lawyer in this Countrey, who does me the Favour to give me this Advice, which will hinder him from Appealing, in case he should have a mind to it, which might have kept you in Play several Years.

We see by the King's Speech to his Parliament, That there are yet no Alliances made; and by the Addresses of the Lords and Commons, We perceive plainly that they have an itching towards a War; but at the same time they give to understand, that they know not which way to go about it: And besides the Party of the *Pacifick* is far more numerous than the others, altho' the others have at present the majority of Votes in the Parliament; of which three Parts in four of the House are highly Incensed, and yet more to see they pretend to Impeach certain Persons of the last Ministry, which will infallibly make a great Noise: And if the Whigs would follow my Advice, and I were willing to give them a good one, they should lye still. Mr. Prior is one of these pretended Victims; his Papers are looked over with malicious Eagerness; he is taxed with having received great Presents in *France*; particularly a great sett of Silver-gilt Plate; I believe that if it be so, he is so much the richer for it. This is all that occurs at present, and that I am without reserve.

Paris. Mr. D'Aulmay de Coulanges.

London, April 17 1715.

I Am ordered to tell you from Mr. Harvey, that you will oblige him in desiring Mr. Le (c) D. D. from him, to send hither some body to fetch the Horses and Dogs which he has had so long, or else to give order to some body to take them. Things are here in such a posture, that great Caution ought to be used, not to give Umbrage to those in Power, who may put a wrong Con-

- (a) Mr. Harvey.
(b) Duke d'Aumont.
(c) Duke d'Aumont.

friction upon the least Trifles, especially since the departure of my Lord Bolingbroke, who is looked upon here as innocent, and People do not see how he could be any ways hurt, notwithstanding the Superiority of the Low Party in Parliament, which however is divided into two, who terribly cross each other, one of which Parties will at last join with the Tories, if the latter are willing: We may draw Consequences: The Dutches of *Portsmouth*, who is at present here, gives a great deal of Offence, as I am inform'd, by pretending to prove that the late King *James* had poyson'd his Brother *Charles*; it was not expected, that after so many Years Retirement into *France*, she should come hither to revive that Vulgar Report, which at so Critical a Time, cannot be for any good Purpose.

I have nothing to add to the Affair of your Merchants, but what I have already acquainted you with. On the other hand, I confirm to you all that I have recommended to you to tell to the Person I wrote to last. Kissing your Hands, I remain —

We expect here shortly, the Marquis *d'Allegre*; for our Ambassador at your Court has Orders to take a Character upon him. I hope you will find Means to Charge some body in the Retinue of the former with the 20 Ells of *Ras de St. Maur*, and 20 Ells of *Taffety*, with Blue and White Stripes, for a Woman's Summer Suit; less than 20 Ells would do, if it be broader than half Ell, and if it be possible, to send at the same time, a Scarf, made of a good Black Silk, pinked for a Woman of a moderate Size, and Slender, you will oblige me, and when you shall acquaint me with the Price of the whole, I shall either pay it to the Person who shall be charged with it, or shall remit it at your choice, &c. As for the Scarves, they are sold ready made at the Palace —

Since what's above written, the Honour of yours of the 12th Instant is come to my Hands. I shall cause your Letter of Attorney to be got out of Mr. *Arthur's* Hands. There are at present great Debates in the Parliament: There was a Member of the High Party, who had the boldness to suggest, That this present Parliament was Illegally Assembled, since the King in his Proclamation gave the People to understand, that it would be a great Satisfaction to him if they chose Whigs, which he said is against the Fundamental Laws of the Kingdom, whereupon there arose high Debates, and by the Majority of Votes, to the great Surprize of the Publick, who expected that that Member should be sent to the Tower, it was carried by a Hundred Voices, that the said Proclamation should be Examined; which 'tis thought will cause great Divisions. When I have any thing particular to impart, I shall do it by a strange Hand, and Subscribe *James Chrétien*, which you must take notice of, and provided you acquaint me that you have received this present Letter, without being opened, I shall be easie.

Directed to *Francis Francia*, and dated

S I R,

Paris, April 24. 1715.

I Have received your two Letters of the 8th and 18th Instant. I am very much obliged to you for having removed to the Chancery the Law-Suit I have with *Treacher*, since you think it the most expeditious way to make an end of it: I still beg of you the continuation of your Care, in order to compass the same; as also to acquaint me how that Affair stands at present. I reckon that Mr. *Arthur* has by this time delivered to you my General Letter of Attorney, according to the Order he has for it from the Chevalier *Cantillon*, of which you will also be pleas'd to inform me.

The Time of the Marquis *d'Allegre's* departure for *London* is not yet known here. I shall not then fail to desire some body in his Retinue to charge himself with the *Ras de St. Maur*, Lutestring and Scarf, which you have desired of me.

Your last was delivered to me very safe yesterday in the Evening: Be easy as to that Matter, as well as to whatever Mr. *James Chrétien* may write to me; pray desire him when he does me the pleasure to write to me, to be very particular as to Facts; and to be well informed before hand: In all which I rely on your Prudence. If during these troublesome Times Mr. (a) *H.* should think fit to make use of Mr. *J. Chrétien*, he may: But his Letters should be directed to my self, and I should afterwards make what use of them he should think fit. Assure him still of my readiness to serve him, and that I should be very glad to

(a) Mr. Harvey.

give him Marks of my Gratitude, for the Trouble he takes, as well as your self, in my Affair with *Treacher*.

When the Character of the Dutches, who is lately gone to *London*, shall be well known, People will not be surpriz'd at the part she actually plays there; but I hope it will produce a different Effect from what she expects, and that we shall come at last to a happy Unravelling. (a) Mr. *le D. D.* was to send about a Fortnight ago, one of his Men to *London*, to bring him his Horses and Dogs. If he is not yet gone, I shall not fail pressing for that Matter.

Pray let us hear from you as often as possible, and still believe me most perfectly,

S I R,

Your most humble and most obedient Servant,

D'AULMAY.

My Lord *Stairs* has not yet taken any Character.

This is directed to *Francis Francia*, and dated,

S I R,

Paris, May 1. 1715.

I Have received yours of the 25th past, with that of Mr. (b) *H.* for the (a) *D. D.* which I have sent to him into the Country, where he is at present. At his return, I shall not fail telling him what you tell me about what is due to the said Mr. (c) *H.*, and in what manner he desires the same to be remitted to him. Assure him that in this, and every thing else, I shall ever do my utmost to do him Service.

By your Letter of the 8th of *April* last, you acquainted me with the Care you had taken to remove to the Chancery my Law-Suit with *Treacher*, by which means he would be obliged to answer within a Month, and therefore I hope that in a short time you will acquaint me with the Conclusion of that Affair, for which I shall be very much obliged to you: I little know how Justice is administer'd in such a Case in *England*: But this I know, that in *France*, that honest Fellow would long before now have been brought to Reason; however, we must wait with Patience to the End.

Pray assure Mr. *J. Ch.* that I am, and shall be very much obliged to him for what he shall write to me: he may likewise depend upon it, that I shall make good use of it; therefore let him continue to let me hear from him the ofteneft he can; but above all let his News be certain, and very particular.

There's yet no talk here of the Earl of *Stairs* being near taking his Character. I must also add, that 'tis not yet known, when the Marquis d' *Allegre* will set out, but what's believed as certain is, that they will out of hand work upon the Fortification of *Mardyke*: Draw your Conjectures upon it.

I am very impatient to know what passes relating to the Prosecution of the late Ministry, particularly concerning the Duke of *Ormond*, whose Name my Wife bears, and is his near Relation, her Name is *Butler* of *Killcom*: That Family may not be unknown to Mr. (d) *H.* however the Ch. (Sir *Thomas*) *Hammer* knows it perfectly well.

We have at present no important News in this Country, unless it be considerable Bankruptcies among those called *Agioteurs* (or Stock-Jobbers) of which there are daily a great Number, and such a Scarcity of Money, as passes all that can be expressed. I am still,

S I R,

Your most humble and most obedient Servant.

Letter from *Francis Francia*.

Paris. Mr. D'Aulmay de Coulanges.

May 30th

London, June 10th 1715.

MY last to you was of the Instant; this is to tell you, That without loss of Time you must send another Letter of Attorney, with a Blank for the Name; for Mr. *Arthur*, after having kept us long at a Bay, saying he would look for it, now says it is lost: Be that as it will, you must revoke that Letter of Attorney, for we are here in Danger, if *Treacher* should bethink himself of asking by what Authority he is Prosecuted, lest, not being able to produce any Letter of Attorney, this Suit should be dismiss'd with Cost; you

(a) Duke d'Aumont.

(b) Mr. Harvey.

(c) Mr. Harvey.

(d) Mr. Harvey.
therefore

therefore see the Consequence: as for the rest, the Affair is on a good Foot, and I believe he'll not stay till he's Cast. Yesterday in the Evening, being the Anniversary of the Restauration of King Charles II. there were here great Riots; nothing was heard among the People but Curses against the present Ministry, and long live James the Third, and the Duke of Ormond. This being so publick, that it cannot fail reaching your Parts, I acquaint you with it, and assure you that

I am, &c.

Mr. Harvey Salutes you, and bid me tell you, That when there is any thing New, if he cannot write to you himself, he will cause the Sieur J. C. to do it for him.

This is directed to Francia, and dated,

Paris, August 7th. 1715.

S I R,
AT this very Instant I receive your last of the first Instant. I will not cease returning you Thanks for the Care you are willing to take of my Affair, desiring you still to continue to the End.

You have reason to be angry at the Indolence (or Supineness) you expostulate about, but be perswaded 'tis only so in Appearance. I even hope that by this time you have convincing Proofs of it, and that suitable Returns are made to the good Dispositions; so that with God's Blessing upon our Friends's good Cause, he will at last cast his Adversary, at least no Succours, or powerful Solicitations shall be wanting. Let me hear, I beseech you, about it as often as you can; and depend upon it, that by so doing you will oblige Persons, who in a proper Time and Place, will be thankful to you for it. The Post (going off) presses me, therefore I conclude, assuring you still, that no Man can be more truly than I am,

S I R,

Your most humble, and most obedient Servant,

D'AULMAY.

Prisoner.] That is wrong Translated. In the French it is Gagner sa Cause, which is gain his Suit; and they have translated it, Cast his Adversary.

Mr. Cooper.] He talks of powerful Solicitations on our side, that is in France; and what could that be to a Law-Suit here?

Clerk reads.] This is directed to Francis Francia, and dated,

Paris, August 10. 1715.

S I R,
LAST Night I receiv'd your last of the fifth Instant; pray be easy, and ere it be long you'll be satisfied.

The Chief of the Name of our Friend the Abbot, arrived here on Tuesday Night in good Health. He is very well pleased, and has reason to be so. He prepares to return Home with all speed, and will carry thither his Friends to spend the Vacation Time. This very Moment I'm going to wait upon him; I reckon to attend him in his Journey, or to be with him soon after his departure. Pray continue informing me the oftenest you can, of your Health, and of that of our Friends: You know how dear they are to me, and what Concern I have in them; therefore do not deny me that Favour, nor that of believing me perfectly as I am,

S I R,

Your most humble, and most obedient Servant,

PAYEN.

Ms.

Mr. Cowper.] Tho' this Letter is sign'd *Payen*, yet it comes from *D'Aulmay*; he says the Chief of the Family is arrived here; that is, the Duke of *Ormond*. And that he was to return from thence, and keep his Vacation in *England*. Hitherto the Correspondence was with the Duke *d'Aumont*, but from this time it is with the Duke of *Ormond*.

Clerk reads.]

This is directed to *Francis Francia*, and dated,

S I R,

Paris, August 21. 1715.

THIS is in answer to your two Letters of the 12th and 15th Instant. I should have sooner answered the first, had it not been delivered to me after the departure of the last Post. Our Friends Law-Suit will shortly, God willing, be ready for Tryal, every thing is preparing for it. The Friend, my Wife's Relation, has read your two Letters, with which he is very well satisfied. He desires you, as well as my self, to let us hear from you as often as you can. Since his arrival he has had two fits of a tertian Ague, of which the Bark has rid him. He was purged yesterday Morning, and in the Afternoon went to take the Air, so that he is now in perfect Health, and in a Condition to attend his Affairs with full Liberty. I have not heard from Mr. (a) H. and I do not believe he has changed his Habitation; at least it is not come to my Knowledge. The King has been Indisposed for some Days past, but without appearance of any ill Consequence, thanks be to God, who will preserve him to us a long time in his Mercy.

Half a dozen Souls of *Lower Normandy*, and as many of *Mans*, must needs possess the Body of *Treacher*, and inspire him with all the Chicanes he plays me. I shall write to him by the next Post, in the Stile you advise me, and agreeably to my own Thoughts, for I swear to you, there's nothing I shall leave undone to get my Right of so great a Knave; I hope you will second me, and that you'll give him no Quarter. Pray acquaint me with what you have done upon his last incident.

Sir, I Salute you, and am perfectly

Your most humble, and most obedient Servant,

PAYEN.

Mr. Cowper.] This explains that there was another Cause depending, besides that of the Law-Suit: For he says, Our Friends Cause will soon be ready to be try'd, all Preparations are making for it. Now there was no Cause depending in *France*, for this is a *French* Letter from *D'Aulmay*, and it is not pretended that there was any Law-Suit depending on that side the Water.

Clerk reads.]

This is directed to *Francis Francia*, and dated,

August, 24. 1715.

I Am very much surpris'd not to have hear'd from you by the Post that came in Yesterday. Our Friend was at my House expecting the same. We desire you both, Sir, not to let one Post go off without writing to us, and acquainting us with what passes with Relation to our common Friend's Law-Suit. When you see Mr. (a) H. assure him that all our Friends are perfectly well. The King's Health grows better and better, Heaven be praised.

I have had so much Business for some Days past, that I could not write to *Treacher*: I would do it speedily, but I still desire you not to give him any Quarter, and to believe me perfectly,

S I R,

Your most humble, and most obedient Servant,

PAYEN.

Mr. Solicitor General.] This shows a distinction between the Cause of their Common Friend, and the Cause of *Treacher*:

(a) *Mr. Harvey.*

(a) *Mr. Harvey.*

Clerk reads.]

Clerk reads. This is directed to *Francis Francia*, and dated *August 28. 1715*;

S I R,

I Received your Letter of the 22th instant. Were I permitted to give you a Detail of all that passes concerning the Affair you know, you would be more easy than to me you appear to be, and charge us with less Negligence than you do. I know there are favourable Moments, which 'tis dangerous to let slip; but then will you not agree with me that 'tis Matter of Prudence to foresee all Inconveniences, and in order to that to take such right Measures as to be able to surmount them all? This is now doing, be persuaded of it, and that your Friends are more zealous than ever to procure you all the Satisfaction you may desire, therefore be easy some Time longer. You did me the Pleasure to acquaint me, that on the 29th past Treacher was adjudged to deliver to us his Account within a Fortnight, that he had since made a new Chicane, demanding Security for his Charges, and with the Measures you were pleased to take upon this Demand. I therefore believed that after this we might hope to see an End of this Affair, and that nothing now remain'd but to perform the Judgment or Rule of the 29th of July, nevertheless we are still put off to the Month of October. Pray acquaint me with the Cause of it.

We are here in a cruel Uncertainty about an Affair of the last Importance, God grant it may have a happy Issue. Pray continue writing to me every Post, and believe that I am ever with all my Heart, Sir, your most humble and most obedient Servant,

P A Y E N.

Mr. Denton. This appears to be a Letter in Answer to *Francia's*, wherein he complains that Things are not carry'd on with Vigour; I know, says he, there are favourable Moments that are not to be let slip; and then at last he concludes with the private Affair of *Treacher*.

Clerk reads. This is directed to *Francis Francia*, and dated *September 3. 1715*.

S I R,

I Received this very Instant your last of the 29th past, and as the Post is going off, I have only Time to write an Answer. I did not write to you by the last Post, neither did I receive any of your Letters. I am extream sorry for all the Trouble I give you with respect to the Law Suit I have with that Rogue, I shall still hope that thro' your Care we shall both be shortly rid of him.

We have at last had the Misfortune to lose the greatest of Kings, who, as undoubtedly you know it already, died on Sunday last at a Quarter past Eight in the Morning, with all the Sentiments of Religion and Greatness that were ever observ'd in the greatest Heroes; and indeed 'tis generally acknowledg'd that he never was greater than in the last Moments of his Life. Monday Morning my Lord Duke of Orleans, accompanied by the Princes of the Blood, and the Dukes and Peers, repair'd to the Parliament, where he was declared Regent of the Kingdom with all the Authority due to that Dignity and his illustrious Birth. All France is overjoy'd to be under his Government, from which they can certainly expect nothing but happy Days, since no Person in the World has more Grandeur, Equity, Penetration, and Virtues in general than that Prince. The Journey to Germany would be proper enough, and I wish it may be performed, the rather because for the Reasons you know; our Measures have been somewhat suspended, tho' not in the least broke, things going on still better and better; be persuaded of it, as also that due Notice is taken of your good Will. In particular (a) Mr. H— must undoubtedly be where you were told, for he has not appear'd here. 'Tis true my (b) D. D. and (c) M. B. are in a House within a small half League of this City, which a private Person has lent them, but they receive there all their Friends, with whom they go to Dine and Sup every Day; they are both in perfect Health, and their Thoughts are very different from those that are ascribed to them, I mean that they are such as they ought to be; assure their Friends of it. It is not possible for me to send you to Day what

(a) Mr. Harvey. (b) Duke of Ormond. (c) Lord Bolingbroke.

you desire of me, 'twill be for the next Post. Let no one slip without acquainting me of your Health, for which you know I am more concern'd than any Body else, and be persuaded that I am, more than any Man, Sir, your most humble and most obedient Servant,

P A Y E N.

Mr. Cowper junior. This Letter gives an Account of the Death of the *French* King, and tho' Things may be suspended, still they will go on, and it will be for the better.

Mr. Denton. The next Letter is not directed to any Body, it came under a Cover, which is lost; it appears to come from *D'Aulmay*, but not to be directed.

L. C. Baron. Is this one of them that was found in his House?

Mr. Denton. This is one of them found there, and owned by him.

Clerk reads.

September 6. 1715.

S I R,

YOUR Letter of the Second Instant was just now delivered to me. My last inform'd you, that 'twas only on the First Instant we had the Misfortune to lose the greatest of Kings, but that for the Comfort of *France*, God had reserv'd M. the Duke of *Orleans* for our Regent. I cannot write any thing that can be depended upon in relation to what you desire of me by your Two last, as soon as there is any thing I shall inform you of it. Since the Abbot *B*— came into this Kingdom, he has been very often in the Country; he is still actually there; as soon as he is return'd I shall not fail speaking to him according to what you write; as I have no Intimacy with any Merchant, and he must be one that I can depend upon to make use of his Direction, I cannot give it you this Day, but I hope I may by the next Post; in the mean time pray continue writing directly to me, and if you have any trusty Hand, other than your own and your Sons, it would not be amiss to make use of it; I even am of Opinion, that a Key or Cypher for the principal Names which you may send me, and of which you should keep a Copy for your own Use, would be necessary, for I will ingenuously own to you that such a Precaution appears to me very necessary. You'll find here enclos'd the Picture you have desired of me; it being impossible to send it to you without folding, when you have received it you must wet a Cloth, which you'll lay on a Table, and will lay also the Print upon it, which will take the Plaits away. The Post (going off) presses me, and I have but just Time to tell you that I am your most humble and most obedient Servant,

P A Y E N.

Prisoner. My Lord, This Letter is another Hand, and there is no Direction on it.

L. C. Baron. It was found among your Papers, and you own'd it; that is prov'd by the Secretaries.

Prisoner. This was pretended to be stopt at the Post-Office.

L. C. Baron. No, it was found among your Letters.

Mr. Soll. Gen. The next Letter is very particular; he says the Cause of the common Friend will be at an End in a little Time; but as to his own particular Cause, he was unhappy to have to do with so troublesome a Man.

Clerk reads. This is directed to *Francis Francia*, and dated Sept. 14. 1715.

S I R,

I Did not write to you by the last Post, by reason I did not receive your last Letter, which by the by, is without Date, till the Day after its Departure. Nor did I receive any from you by the Post that came in Yesterday, so that you owe me Answers to my two last, which I expect with Impatience, particularly an Answer to my last, by which I sent you what you had desir'd of me. The Contents of your last without Date have given me a great deal of Satisfaction, as well as to all our Friends, who return you Thanks for it, and have charged me to assure you of it, and desire you to continue. We knew already part of what you write about our Friend's Cause, which

with God's Blessing, will soon end to his Satisfaction, otherwise all Appearances would be very deceitful. As for my own Cause, I cannot forbear telling you, that I am very unfortunate in having to do with so dishonest a Man, after having trusted my Goods with him, and loaded his Partner with Services and Civilities during his Stay here. But my Comfort is, that you will not give him a Moments respite, and that you will at last rid me of his unworthy Chicane. I could have wished the Abbot had not Embark'd me with such People; altho' I am perswaded he did not do it with any ill Intention, yet I find my self Embarrass'd with those Scoundrels, whom I trusted only at his desire.

The King went the Day before Yesterday to the Parliament to hold his Bed of Justice, where the Regency was confirm'd to the Duke of Orleans, with all the Authority which such a Dignity deserves. We have nothing else new at present. If any thing happens I shall not fail acquainting you with it. I am most perfectly Sir, Your most humble and most obedient Servant,

PAYEN.

As we go at this time pretty often into the Country, be not uneasy if perchance I should fail some Post or other, answering your Letters regularly, which however will not be, except when I shall be absolutely obliged to it.

Here's a Direction which you may use for the future if you think fit. But in case you do, you must conform your self to this Model, and mark two Strokes both before and after the Word *Paris*.

To Madam, Madam the Widow de Beaugé, Merchant, at the Fair Star, Rue Tirechape. =Paris=

Mr. Att. Gen. The Correspondence now began to be dangerous, and therefore it was to be directed to a Woman, that there might be the less Suspicion.

Clerk reads. This directed to Francis Francia, and dated September 17. 1715.

SIR,

Y Our last of the 9th Instant, which I should have had on Friday last, was not delivered to me till Sunday in the Evening. I ascribe this Delay only to the Winds, which may have hindred the Packet-Boat, from having as quick a Passage as usual. I have caused the three Letters which you have directed to me, to be put into the Post House.

My (a) D. D. had already shew'd me the Epitaph you have sent me, which with Gentlemen, will ever pass for the Spring of Cerberus. I hope also that infamous Author, will sooner or later be rewarded according to his Deserts. His Insolence may even be attended with some unexpected Consequences. We have, thanks be to God, a just and equitable Regent, from whom we may hope, every thing he has already given us Proof of it, by the good Order he has settled in all Affairs, which indeed had a great Occasion for it.

You must undoubtedly have receiv'd by this time the Picture you desired of me, and I hope you will acquaint me with it by the next I shall receive from you.

All our Friends, are thank God, in perfect Health. My (b) D. D. had some Days ago another slight Fit of an Ague, which had no Consequence. We are here, as well as you, impatient to attain the End propos'd. But we must take Patience, and be ruled by those who are at the Helm. I still assure you, Sir, that I am with Sincerity, your most humble and most obedient Servant.

Mr. Soll. Gen. We shall conclude the Letters with a very particular one from D' Aulmay, which taxes Francia with Impatience, and takes Notice, that Mr. Harvey was eager for going into France, but it was the Duke of Ormond's particular Advice, that he should not go, because probably they might come over to him.

Clerk reads. This is directed to Francis Francia, and dated September 23. 1715.

SIR,

I N Answer to your last of the 16th Instant, I begin with telling you that our Friends are much to blame to throw themselves so precipitately into Impatience,

(a) Duke of Ormond. (b) Duke of Ormond:

especially (a) M. H. to whom you shall communicate this Letter as soon as you have receiv'd it, and tell him he must by no Means think of coming hither, as by your last you acquainted me he is preparing to do. 'Tis my (b) D. D. who charges me expressly with what I write to you, and who desires him to stay. He may easily guess at the Reason, which will give you all to understand, that this is not a time to be impatient, but to shew more Resolution than ever.

Perhaps some Letters for me will be delivered to you; as soon as you have received them, I desire you to forward them to me, either with the Directions I have sent you, or directly with my own.

You know perhaps by this time, that 'tis pretended that there are at *Havre-de-Grace* Two Ships on Board of which are Arms, which has alarm'd some People, but without ground. For if that News be true, they must be Arms that are sent as a Present to the King of *Persia*, as I am told; therefore this ought not to make any body uneasy. As for the rest, Sir, let all of us recommend our selves to God, and hope we shall soon be quiet, you at home after your wise Government, shall have dissipated all the Feuds that disturb the Tranquility, and we by the paternal and indefatigable Care which my Lord Duke of *Orleans* takes upon him to procure us, the Repose which we have so great Occasion for, and of which we have so long been depriv'd.

You will judge of it by the List I send you of the Councils he has lately establish'd, and which are certainly made up of the most able, and most worthy Persons in the Kingdom. I expect to hear from you, and ever am, Sir, your most humble and most obedient Servant,

PAYEN.

Whereabouts are we with our honest Man? I hope you will acquaint me by your next.

Mr. Denton. My Lord, The time when the King was pleas'd to acquaint the Parliament with the Design of the Invasion, was the 20th of July.

We have a Copy of the Speech examined.

Then Mr. Paxton was Sworn

Mr. Soll. Gen. Have you examined this, and is it a true Copy?

Mr. Paxton, yes.

Mr. Soll. Gen. Where did you examine it?

Mr. Paxton, At the Parliament Office.

Mr. Hungerford. What did you examine it by?

Mr. Paxton, By the Journal of the House of Lords.

Clerk reads. *Die Mercurii 20^o Julii 1715.*

His Majesty after conferring with the Lord Chancellor, spake as follows.

My Lords and Gentlemen,

I Have given Direction to my Lord Chancellor to declare to you in my Name and Words, a Matter I think of the greatest Importance.

Then the Lord Chancellor spake as follows.

I have received his Majesties Commands, to deliver to you in his Majesties Name this his Majesties Speech now put into my Hands by his Majesty from the Throne.

My Lords and Gentlemen,

THE Zeal you have shown for preserving the Peace of my Kingdoms, and your Wisdom in providing so good a Law to prevent all riotous and tumultuous Proceedings, give me great Satisfaction, but I am sorry to find that such a Spirit of Rebellion has discover'd it self, as leaves no Room to doubt, but these Disorders are set on Foot and encourag'd by Persons disaffected to my Government, in Expectation of being supported from Abroad.

The Preservation of our Excellent Constitution, and the Security of our Holy Religion, has been, and always shall be my chief Care; and I cannot Question, but your Concern for these invaluable Blessings, is so great, as not to let them be exposed to such Attempts as I have certain Advices are preparing by the Pretender from Abroad, and carrying on at Home by a restless Party in his Favour.

(a) Mr. Harvey. (b) Duke of Ormond.

Gentlemen

Gentlemen of the House of Commons,

In these Circumstances I think it proper to ask your Assistance, and make no doubt but you will so far consult your own Security, as not to leave the Nation under a Rebellion actually begun at Home, and threatened with an Invasion from Abroad in a defenceless Condition; and I shall look upon the Provision you shall make for the Safety of my People, as the best Mark of your Affection to me.

Sir J. Fekyl. My Lord, We shall not trouble the Court nor the Jury, with reading any more Letters; I only take leave to observe shortly upon the Letters which have been read. The Correspondence began with a Desire from *D' Aulmay* to have some Correspondence about Affairs here, because his Wife was related to the Duke of *Ormond*. *Francia* tells him, there was a Discourse about the Marriage of the Pretender with the Arch-Dutcheffs, which says he, is essential to the Interest of your Wife. *D' Aulmay* writes in Answer, that there had been some talk of that Marriage but he don't care to come into it: He thinks a Party War would be much better. *Francia* writes again, that it can't be expected that Persons of Fifty or Sixty Thousand Crowns a Year, should run the hazard of losing such Estates, unless more Encouragement were given them. And that is followed by another Letter from *Francia*, wherein he writes, that now we are to expect every thing from your side the Water, that is Explications, &c. Then he desires him if he thinks proper, that he would change his Name, and write by a strange hand.

There is this observable in these Letters, that the Prisoner plainly shows his desire that there should be an Assistance for the Pretender from France; and so all the Letters taken upon him fall into that Design; nay, he was anxious and impatient for the critical Minute. The Death of the French King is taken notice of to be a great Loss, yet he is assured that things will revive again; for that Person that succeeded in the Government, had favourable Thoughts and Intentions.

The Letters that are entred in his Copy-Book, speak very plainly; and Gentlemen, what can be the purport of those Letters of the Prisoners that are not entred, that can't be sought for any where, but in those Letters which were sent hither in Answer to them; and he is so far from pretending that these were not Letters sent in Answer to his Letters, that when he came to be examined, he told what the Design of them was; that it was the Design of the Pretender to invade his Majesties Dominions; and therefore it now appears plainly to you, that he did Solicite Aid and Assistance in Order to an Invasion from Abroad, and an Insurrection at Home, in Favour of the Pretender, and in Order to depose his Majesty.

Mr. Att. Gen. We shall leave it here, and submit it to your Lordship and the Jury, upon the Evidence we have offer'd.

Mr. Ward. May it please your Lordship, and you Gentlemen of the Jury, I am Council for the Prisoner, and what I shall humbly offer to your Lordship before we go into our Evidence, is a single Point, we shall lay before you and insist upon; a particular Circumstance in the Indictment, which is such, that considering the Circumstance of my Client, it is impossible as the Law stands, that he should be guilty in such manner as is charged in the Indictment.

The Prisoner happens to be an Alien born, he was born at *Bourdeaux* in France; he came from thence into England, and never was Naturaliz'd. He owes therefore no natural Allegiance, nor can be guilty of any Treason against the King as his natural Leige Lord, as its laid in this Indictment.

There is a Distinction of a double Allegiance, one that is due from a natural born Subject, and the other that is due from an Alien. The latter owes only a local Obedience with respect to his Protection, whereas the former owes it in respect of his Birth. This is a Distinction well known in *Calvin's Case*. It appears, that if an Indictment for Treason be against an Alien, it must be charged to be against his Allegiance in general, but not against his natural Allegiance. This is taken notice of in a great many Cases. In the Reports of my Lord *Hobart*, *Vaughan*, and *Keyling*, there are several Cases which show this Distinction.

In my Lord Chief Justice *Holts* time, in the Trial of *Cranborn*, and *Lowick*, April 22. 1696. an Exception was taken to the Indictment; that it was not said *Contra Naturalem Ligeantiam*; and in that Case, *Calvin's Case* was agreed to be Law.

It was held, that in case of an Alien, he ow'd only a general Allegiance, and it was agreed, that in case of an Alien, it must not be *Contra naturalem ligeantiam*; and my Lord Cheif Justice *Holt* says, if it were so, it would be ill. And it may be given in Evidence, that he is an Alien, in order to acquit him of a Crime, charg'd to be against his natural Allegiance; there is none such due.

Mr. *Hungerford*. My Lord, The Objection is founded on a Fact. If the Fact is admitted, we will argue upon it; if not, we will call some Witnesses to prove it.

Then *Simon Francia* was sworn.

Mr. *Hungerford*. Pray give an Account what you know of the Prisoner, what Country Man he is, and where he was born?

Simon Francia. He is my Brother, he was born in *France* at *Bordeaux*.

Mr. *Att. Gen.* Are you Elder or Younger than he?

Simon Francia. I am Four Years Elder.

Mr. *Att. Gen.* How then can you remember what was done when you was Four Years old?

Simon Francia. I can't remember the Day of his Birth, but I was bred up with him at *Bordeaux*, we were all born in the same House.

Mr. *Hungerford*. What Age was you of when you first remember him?

Simon Francia. I remember him when I was about Six Years old.

Mr. *Hungerford*. And you don't remember that your Father and Mother came to *England* in that time?

Simon Francia. No.

Mr. *Hungerford*. Did your Father and Mother live at *Bordeaux* when you was about Six Years old?

Simon Francia. Yes.

Then *Jaques Gonsales* was sworn on the Books of *Moses*.
And an Interpreter was sworn, because the Witness spoke English very imperfectly.

Mr. *Hungerford*. Pray give an Account what Countryman the Prisoner is, and where he was born?

Gonsales. The Prisoner is the Son of *George Francia*, and *Mary Gonsales* my Sister. He was born at *Bordeaux* the 26th of *March*, *New Style* 1675.

Sir *J. Fekyl*. How do you know he was born there?

Gonsales. Because I was present when he was born. My House was over-against my Sister's, who was the Prisoners Mother; afterwards he was baptized in the Church of *St. Andrew*.

Mr. *Hungerford*. We have two or three Witnesses more, his Godfather and Godmother; but I think it plainly prov'd by these Witnesses, so that we need not go any further. Mr. *Attorney*, do you admit it, or shall we examine more Witnesses?

Mr. *Att. Gen.* Prove what you can.

Mr. *Hungerford*. Then Mr. *Attorney*, you admit what we contend for. I am sure if he be a good *Englishman*, he cannot be a false Traytor.

Mr. *Att. Gen.* He speaks good English.

Then *Emes Lamira* was sworn.

Mr. *Hungerford*. Give an Account whether you know where the Prisoner was born?

Lamira. He was born at *Bordeaux*, I liv'd there when he was born.

Then *Jaques Gonsales* was call'd again.

Mr. *Att. Gen.* How long hath the Prisoner liv'd in *England*?

Gonsales. I can't tell positively.

Mr. *Att. Gen.* As near as you can?

Gonsales. I can't tell, for he has liv'd at one part of the Town, and I at the other.

Then *Simon Francia* was call'd again.

L. C. Baron. How long ago did your Brother come into *England*?

Simon Francia. He hath been here twice. He was here about Twenty Years ago, and this last time, he hath been here about Six or Seven Years.

L. C. Baron. How long did he stay when he first came?

Simon Francia. About Eight or Nine Years.

Then

Then Cecilia Ceres was sworn.

Mr. *Hungerford*. What do you know of the Prisoner? What Country Man is he?

Ceres. I went to School with him at *Bourdeaux*.

Mr. *Hungerford*. Where was he reputed to be born?

Ceres. At *Bourdeaux*, in the same Street where I was.

Mr. *Hungerford*. How Old was he when you knew him first?

Ceres. We were both Children.

Mr. *Hungerford*. I think the Place of a Man's Birth can't be better prov'd, it is prov'd by some that were in the Room at his Birth, some that went to School with him, and some that knew him there a Child.

Mr. *Att. Gen.* If the Jury should be satisfied with this Evidence, it will not acquit the Defendant, the Opinion in *Cranborn's* Case being, that the Word *Natural* was not necessary to be in the Indictment; and adding an immaterial Word will not therefore make the Indictment bad. If this does not satisfy the Defendant's Council, I shall insist that this Point be found specially.

Mr. *Just. Pratt*. If you insist that you have given a sufficient Evidence to satisfy the Jury, and indeed it is a strong Evidence, Mr. *Attorney* says, if the Evidence is to the Satisfaction of the Jury, he is willing to find it specially. Therefore are you willing to leave it to the Jury on that single Issue?

Mr. *Hungerford*. That is giving up all the rest. I would a little enforce and apply this Evidence.

Mr. *Just. Pratt*. I believe, if Mr. *Attorney General* desires it to be found specially, it was never known to be denied.

Sir *J. Jekyll*. I desire it may be found specially.

Mr. *Hungerford*. I will be bold to say, this Objection is in all the Authorities which we have in the Law touching this Matter, held good: A Man who is not a natural born Subject cannot owe a natural Allegiance: And it is very hard, that without offering any Reason, to raise a Doubt, but upon bare asking to have a Matter found specially, it must be so.

Mr. *Att. Gen.* If you have a mind to it we will debate it with you now.

Mr. *Hungerford*. With all my Heart, I am ready to speak to it now.

Sir *J. Jekyll*. If we were to expect the Judgment of the Court upon it now, I would debate this Matter now, and I should not doubt but to be able to satisfy the Court that the Indictment is well fram'd against the Prisoner, notwithstanding he is an Alien born.

Mr. *Hungerford*. I would be glad to hear one Authority to support Sir *Joseph's* Opinion.

Mr. *Ward*. May it please your Lordship, I am Council for the Prisoner, who stands indicted of High Treason. The Charges in the Indictment (besides the general Charge of imagining the King's Death) are conspiring to levy War, soliciting Aid from Abroad, and writing Letters for that Purpose into Foreign Parts.

What they have gone upon has been a long Course of Letters between the Prisoner and *D'Aulmay*, alias *Payen*, at *Paris*. They have produc'd a Copy-book of Letters, which they say he wrote, and have read some Letters out of it, which we must submit to you, whether there is any thing contain'd in them that amounts to Treason. They have also produc'd Letters to him from *D'Aulmay*, but we must submit that likewise, whether they can any ways affect him; he can answer only for what he wrote himself.

We did insist upon it, that they ought not to produce any Letters that were not specify'd in the Indictment, and tho' we were over-rul'd in that, yet your Lordship will be pleas'd to consider the Prisoner under this Disadvantage, that he stands indicted for writing Treasonable Letters, without one Letter specify'd, or the Date, and much less the Substance of it, so that he can't be suppos'd to be ready to offer any Evidence, or to give any Answer, to explain all the Letters that in the Course of his Life he may have wrote, and perhaps some of them may be so darkly penn'd, as not to be capable of an Explanation on a sudden.

It may be necessary also to shew your Lordship the Difficulties we have been under since we were taken up, and that will make it necessary to shew, that when we were committed, it was to a strict Confinement; we were prohibited from any Body coming to us, and from Pen, Ink, and Paper; no Body had Access to us, unless some Persons from the *Secretaries Office*, to press us to some Discoveries, which we declar'd we could not make. We will shew by them that were by at those Times

Times what we were press'd to, and that will be an Evidence of our Innocence, when we withstood such Importunities.

They have offer'd some things, which will, I hope, go a great way to shew that he was not guilty of Treason. My Client was a Stranger, born in *France*, came here to Trade, and his Business not being very successful, he was willing to undertake something of less Value, and so engag'd in sending Letters from the Gentleman that has been nam'd, for the Profit of double Postage, which is allow'd in those Cases.

It was observ'd by the King's Council as a very strange thing, that a Man should enter in his Book Letters of a Treasonable nature, we say the same, and that is a Circumstance to shew that they were not of that nature; besides, the Entry of a Letter in a Copy-book is not like a Copy that the Law allows to be given in Evidence, that must be carefully examin'd; but in those Entries of what a Man writes over to his Correspondents, there may be Mistakes in them, and such as a Man's Life, in Case of High Treason, may be lost upon; therefore you can't found so great a Certainty upon this Book as upon the Letters themselves or Copies examined and legally proved.

Another Circumstance to shew how unlikely it was that this was a Treasonable Correspondence, or any thing that the Prisoner was concern'd to conceal, is, that he never took care of attending at the Post-Office, or engaging any one to attend there, to dispatch or take Care of his Letters, but rested at Home till the Letter Carriers brought them about, or else they were left at one *Everald's* a Watchmaker in the *Strand*, where he had lodg'd, and they have been observ'd to lye there on a Table in a common Room for a Week together before they have been call'd for, or they have been sent to him.

It has been observ'd by the King's Council, that towards the latter End of the Correspondence, when he began to write more openly, that he neglected to enter his Letters in the Book; but there is no reason for that Surmise, for it appears, upon one of the Letters they have produc'd from *D'Autmay*, that he complains he had not heard from the Prisoner in Three Months Time; and to suppose those Letters which do not appear, worse than those which do, is a Presumption, we hope, will never be admitted in a Case of Life.

As the Prisoner himself could not apply himself to consider of any Account or Explanation of these Letters, much less can it be expected that we who are his Council can be of any Service to him in that Point, because we only hear those Letters read that the King's Council think fit to produce; there were others before and after, and those we are Strangers to; whatever there may be in them that may clear up the Expressions in those that are produc'd by the King's Council, we are entirely depriv'd of the Benefit of them; for the Prisoner has not been admitted to peruse his own Book, or to have recourse to any of his Papers. The Power of seizing Papers, that may be of Use to a Man in his Defence, seems to me something dark; but I shall say nothing to it in this place.

We shall give your Lordship an Account of the Prisoner's Character and Circumstances. He was under low Circumstances, even to the pawning his Cloaths and Goods. People that are concern'd in Things of this Kind are usually better supported than he seems to have been. And we shall shew that he has at all times given all Instances and Proofs of his being quiet under the Government, and well affected to it.

Under these Circumstances, if there was stronger Evidence than is in the Copy-book, it would not be sufficient. I hope, Gentlemen, you have distinguish'd between those Letters in the Copy-book and those that were sent to him, which latter, how Criminal soever they may be, can't be made use of to his Prejudice.

If we prove these Circumstances, which is all that can be expected from us, we hope you will not think any thing in these Letters a sufficient Evidence to find him guilty of this Crime. And, Gentlemen, if any of those Letters can have such a Construction, yet, considering the Nature of the Copy-book, and the Manner of Keeping such Books (which has fallen more under your Observation than mine) and how void of Care he was in managing those Letters that came to him, you will not think it probable that he was engag'd in a Correspondence of such a nature; and if any thing looks that way, it may either be a Mistake in him that enter'd the Copies, or might be explain'd, if we were Masters of the rest of the Letters, and of the Book.

Mr. Hungerford.

Mr. Hungerford. My Lord, I shall take up but a very little of your Time till we have gone through our Evidence, and then shall apply my self to make some Remarks upon it. But in general, the Accusation contained in this Indictment is, That this Man has conspir'd to take away the Life of the King; the Overt Acts laid are, That he conspired to levy War, and endeavour'd to engage Assistance from abroad, and wrote Letters, and sent them to divers Persons beyond Seas for that Purpose.

Gentlemen of the Jury, I am sure you must observe, that as to a direct Proof of his intending to take away the truly precious Life of the King, there is none, but what is endeavour'd to be inferr'd from these Letters. If there were, I am sure I should not, and, I believe, none of my Profession would have spoke one Word for him. But all that is said arises from himself. There is no Consultation appears, but that this Man consulted with himself and his Compting-House to take away the Life of the King. As to any of those Letters, there is nothing in them that looks that Way. And as to what is contained in the Letters received from *France*, they cannot affect him. All that can be inferr'd from them is, that he was privy to what was contained in those Letters: And if that were High-Treason, yet it can only amount to Misprision of Treason in the Prisoner. You who live in this great Trading City, the most eminent for Trade and Commerce in the World, in which, I believe, you are very much concerned, know that a great Part of the Commerce is carried on by Letters, and all or most of them are entred in Books; you must have a due Apprehension of the Consequences of such a Transaction as this is. To have a Man living in his House in Peace, under the Protection of the King's Laws, to have his Books and Papers taken from him, and those Books and Papers turn'd against him, to the Destruction of him and his Family.

Mr. Att. General. I desire you would forbear inveighing in this Manner. This is not a proper Manner of proceeding.

Sir J. Fekyl. You have had an Account that an Information was given to the Secretary of State, of a treasonable Correspondence carried on by this Man, and here is an Harangue complaining that his Person and Papers are seiz'd. You know if there had been an Information given to the meanest Officer in the Kingdom, he could not have justified himself, without doing the same Thing.

Lord C. Baron. You are not to arraign those Proceedings.

Mr. Hungerford. I don't doubt but that noble Lord had Grounds for what he did, but what Grounds he had doth not appear: And surely I have a Right to observe, that all the Evidence that appears against the Prisoner, arises from those Letters and Books that were taken away from him.

Mr. Att. General. Pray *Mr. Hungerford* act within the Bounds of your Profession.

Mr. Hungerford. Mr. Attorney, I am to be corrected by the Court, and not by you. I owe Duty to my Lords the Judges, and I shall always pay it.

Mr. Just. Tracy. You ought not to reflect on that Matter, of seizing the Papers.

Mr. Hungerford. I am not understood. I say all that is offer'd against him is from the Papers found in his Custody.

Mr. Just. Prat. If that was all that you had said you ought not to have been interrupted, but I never knew in my Life, but what was done in this Case was ordinarily done in the like Cases, and ought to be done, and you ought not to go on with Invectives to the Jury, complaining that his Papers are seiz'd, and then that those Papers are turn'd against him. When a Correspondence is carried on by Letters, ought they not to be seized, and if they appear to be treasonable, ought they not to be kept, and made Use of against him. We must not sit here to hear Invectives against Magistrates of the highest Quality, for doing that, which if they had not done, they had failed in their Duty.

Mr. Hungerford. I have not said any Thing to impeach the Legality of what was done. All I said, and do say, is, that the Evidence is from the Papers found in his own Custody.

You have heard the Letters read, and you observe, That great Part of them is about Dogs and Horses, and a Summ of 130 *l.* 4 *s.* and about a Suit that was carrying on in the Court of Chancery. As to the Book, I shall touch no more upon it now, but I believe we shall be able to offer Proof that there is not any Part of it wrote by himself. How that will agree with the Evidence already given, we must submit. We shall likewise give some Account of some Discourses that have been had with the Man himself. And, I believe, I need not observe to Gentlemen of your Figure and Circumstances, That the Mr. *Harvey*, who is represented by the King's Council, to be the first Promoter of, and carried on this treasonable Correspondence, is at Liberty, even without a Trial; and what the Law hath done for him without a Trial, I hope shall, by your Justice, be done for the Prisoner, now upon his Trial, that is, that he shall be acquitted.

Mr. *Ward*. Though it is difficult for us to be put to explain any of those Letters, yet we will call some Witnesses to explain one, which mentions Persons of 50 or 60 Thousand Crowns a Year, and shew that it was meant of one that was concerned in the Revenue in *France*, and suffered by it.

Mr. *Just. Prat.* If you are going to explain that Letter, it will be necessary to read it again to the Jury.

Which was done accordingly.

Mr. *Ward*. We will shew it was meant of one *George Francia*, who had been concern'd in the Revenues in *France*.

Simon Francia being sworn.

Mr. *Hungerford*. Did you know *George Francia*?

S. *Francia*. Yes.

Mr. *Hungerford*. Was he concerned in the Revenue in *France*, and had he any Loss there?

S. *Francia*. Yes, he lost all he had.

Mr. *Hungerford*. By what Occasion was it?

S. *Francia*. I don't know.

Mr. *Hungerford*. Was it by his own Management, or depending on others?

S. *Francia*. I don't know, but I know he had an Estate and lost it all.

Mr. *Ward*. We offer this only as a Sample for the rest.

Mr. *Att. General*. What was this Man worth?

S. *Francia*. I computed him to be worth Eight or Ten Thousand Pounds.

Mr. *Att. General*. Doth he answer the Description in the Letter of a Person of Fifty or Sixty Thousand Crowns a Year?

Sir *J. Fekyll*. Had he any Estate in Land?

S. *Francia*. No, only in Money.

Mr. *Hungerford*. Do you know of any Offers that have been made, or Threats used to the Prisoner?

S. *Francia*. I know of some.

Mr. *Hungerford*. By whom.

S. *Francia*. By Mr. *Buckley*. That if he would swear against Mr. *Harvey* of *Comb*, he should have a good Reward.

Mr. *Hungerford*. Do you know of any other?

S. *Francia*. Yes, my Lord *Townshend* told me he had given my Brother five Guineas, and he would give him more if he would swear against Mr. *Harvey*.

Mr. *Hungerford*. Where did he tell you so?

S. *Francia*. In the Office at the Cockpit.

Mr. *Hungerford*. Do you know any Thing of two Warrants that Mr. *Buckley* brought, one for his Release, and the other for his Confinement?

S. *Francia*. I don't know any Thing of that.

Mr.

Mr. Att. General. How came this Discourse between my Lord *Townshend* and you?

S. Francia. I was several Times with him at the Office about my Brother.

Mr. Att. General. I hope it will be proper at this Time that my Lord *Townshend* and *Mr. Buckley*, may be ask'd to this Matter.

Mr. Just. Prat. I suppose you was present when this past between *Mr. Buckley* and the Prisoner.

S. Francia. It was between my Lord *Townshend* and me, and *Mr. Buckley* and me.

Mr. Just. Prat. Who else was by, besides *Mr. Buckley* and you?

S. Francia. No Body else?

Mr. Just. Prat. Who was by, when that which you mention'd, past between my Lord *Townshend* and you?

S. Francia. No Body else. The first Time I applied to my Lord *Townshend*, I think there was another Secretary there.

Mr. Just. Prat. But at that Time that you say this Offer was made, was any Body present?

S. Francia. Indeed I don't remember that there was.

Mr. Cowper. I think you say, the first Time you was with my Lord *Townshend*, there was the other Secretary there?

S. Francia. Yes, there was.

Mr. Cowper. Where was this, in what Room?

S. Francia. In the Cockpit.

Mr. Cowper. What is your Relation to the Prisoner?

S. Francia. I am his Brother.

Mr. Hungerford. You say there was another Secretary by, Was it the other Secretary of State?

S. Francia. I know not who it was, there was another Gentleman.

Mr. Att. General. He said another Secretary of State.

Lord C. Baron. What did my Lord *Townshend* say to you?

S. Francia. He said he had given my Brother five Guineas, and he would give him more, if he would swear against *Mr. Harvey*.

Lord Chief Baron. You say at that Time there was another Secretary?

S. Francia. No, no, not at the Time of that Discourse.

Lord C. Baron. Nor there was no Body with you and *Mr. Buckley*?

S. Francia. No.

Then *Lucy White* was sworn.

Mr. Hungerford. Was you by, or in hearing, when any Offers were made to the Prisoner.

White. Upon the Seventh of September I went to see the Prisoner in *Newgate*. He told me *Mr. Buckley* was to be there with him, and desired me to conceal my self in the Room, that I might hear what past, and I did so. When *Mr. Buckley* came he spoke about one *Flint*; and afterwards *Mr. Buckley* ask'd him several Questions about *Mr. Harvey*. He said he knew nothing but that he was innocent. *Mr. Buckley* told him he must swear right or wrong for the Government; if he would not, he himself would swear High Treason against the Prisoner; for he had taken Money of my Lord *Townshend*, and done nothing for it.

Mr. Hungerford. Did you see any Thing of two Warrants *Mr. Buckley* had at that Time?

White. No.

Mr. Hungerford. Did *Mr. Buckley* see you?

White. No, I conceal'd my self under the Feet of the Bed.

Mr. Att. General. You say this was the Seventh of September. What Year?

White. In the Year 1716.

Mr. Att. General. Where was he then?

White. In *Newgate*.

Then

Then *Mary Meggison* was sworn.

Mr. Hungerford. Do you know of any Offers that were made to the Prisoner, and by whom?

Meggison. Upon the Twenty Eighth of September last I was in *Mr. Francia's Room*, and *Mr. Buckley* came in and told him he should be tryed suddenly, and there were a great many Witnesses against him; and he would swear against him, because, says he, you have cheated my Master of Five Guineas, and won't swear against *Mr. Harvey*.

Mr. Att. General. Was you in the Room then?

Meggison. I sat upon a little Box at the Bed's Feet, and it was so dark he could not see me.

Mr. Att. General. How came you to *Newgate*?

Meggison. I have been a great many times in *Newgate*.

Mr. Att. General. You dwell there sometimes, don't you?

Meggison. No, I never did.

Mr. Att. General. Are you a married Woman?

Meggison. Yes.

Mr. Att. General. What is your Husband?

Meggison. A Dealer, but he is not in *England* now.

Prisoner. What Room was I in?

Meggison. A little dark Room.

Prisoner. What do they call it?

Meggison. The Lions Den.

Prisoner. Every Body knows that Room is a dark Room, that People can't easily be seen in it.

Mr. Hungerford. Did you hear *Mr. Buckley* say any thing more?

Meggison. Nothing, but that he would bring my Lord *Townshend* into Court, on purpose to influence the Jury by his presence.

Mr. Hungerford. As to these two Witnesses, we have several to speak to their Reputations; but I believe you have no doubt as to that.

Sir J. Jekyll. I dare say no one Person in Court believes a Word they say.

Then *Mr. Buckley* was called again.

Prisoner. I desire to know whether you was not with me in the Lions Den.

Mr. Buckley. My Lord, the Prisoner sent to me by *Revell* the Turnkey, and desired to speak with me; when I came to him, he spoke to me first about *Flint*, and desired he might be released from his strait Confinement; and then about his own Affairs. He thank'd me for my Humanity in coming to talk with him, so we parted immediately. I told my Lord *Townshend* what had past; *Flint* had the Benefit of it. He had been confined close, but *Francis* speaking on his behalf, he was released from that Confinement; and that was the Business I went about. The Room is a little dark Room, but if any Body had been at the foot of the Bed, I believe I might have seen them.

Lord C. Baron. Did you say those Words?

Mr. Buckley. No my Lord, it is impossible I should.

Mr. Hungerford. Not impossible surely?

Mr. Buckley. Yes, impossible, I appeal to my Character: I entirely and utterly deny it. I desire that *Revell* may be called.

Mr. Ward. We are now in our Evidence.

Mr. Att. General. If the Prisoner calls a Witness that has been called before, and he to make his Evidence entire, appeals to *Revell*, we ought to call him now, for it would have been improper before.

Mr. Hungerford. If it be nothing but that he was sent for *Mr. Buckley*, there is no great Harm in it. Otherwise we are in the Course of our Evidence.

Then

Then *Revel* was sworn.

Mr. Att. General. Do you know the Occasion of *Mr. Buckley's* coming to *Francia* in *Newgate* : Give an Account of what you know of it.

Revell. My Lord, *Mr. Francia*, called to me one Day, and I think it was when I was in the Chappel, and told me, I believe I can do a Piece of Service to the Government ; I believe I can suppress the publishing of the *Shift Shifted*, I am sure I can : Pray let me speak with *Mr. Buckley*. Says I, if you would have me, I will go to him, and desire him to come. When would you speak with him ? At any time, says he ; then I believe the Morning is the best to meet with him ; and the next Morning I went to him.

Sir. J. Fekyll. Did you tell him the Occasion of *Francia's* desiring to speak with him.

Revell. Yes.

Sir J. Fekyll. Was you in the Room with them ?

Revell. No, but afterwards he said to me, I think I have done the Government some Service, you don't hear it come out as it us'd to do.

Prisoner. I desire to know whether *Mr. Buckley* was not angry with you that you did not stand at the Door.

Revell. He order'd me to be about the Door, but there came some Workmen to survey the Chappel, I was obliged to go with them, and he came out and was angry that I was not there ; and after that I stood there till they had done, but I did not hear what Discourse past.

Then the Lord *Townshend* stood up.

Lord Townshend. My Lord, *Mr. Buckley* came to me, and told me of the Message he had receiv'd from the Prisoner about the *Shift Shifted*, a scandalous Paper that was sent about the Kingdom. He ask'd me if he should go : I told him I thought it was right to go, but I told him he must be cautious, for I did not doubt but that the Prisoner was capable of that Villany I now find he is. He came back to me, and told me what he has now said ; and I believe it to be all that past between them, for I have always found him faithful and honest. I thought it was a Service to put a stop to that Paper ; and I did give some ease to that Man that is named.

I am amazed how there can be such Villany as is in the Brother. He came to the Office two or three Times with Petitions. I never said any thing more, than that it was not in my Power to do any thing ; that he must deal ingenuously, tell all that he knew, and shew that he would speak all the Truth ; that that was the Way to recommend him to the King's Mercy ; that I could not do any thing without it. And I believe the manner I treated *Mr. Harvey* will justify me, with all that know any thing of it, from the Suspicion of such Intentions against him. All that I did was in regard to the Prisoners wretched Circumstances, and before *Mr. Stanhope* ; and I never desir'd any thing of him, but to tell the Truth, and the whole Truth.

Prisoner. You told me I should be hang'd, drawn, and quartered ; and your Lordship told me many a time, Damn you, you Dog, now I have got *Mr. Harvey* in my Clutches, and you will let him go from me. If there was no particular Animosity against me, why should I be distinguish'd, for none were put in Irons for Treasonable Practices, but me.

Lord Townshend. I would not take up your Lordship's time, but only to say, that the Warrant for Irons, and to be kept without Pen, Ink, and Paper, was after that Letter had been deliver'd to me, the Contents of which will sufficiently justify the Precautions used in that Warrant. I was sorry to see the ill Use he made of the Liberty that I had before given him, and I did issue that Warrant in that manner. Treasonable Practices were then no moreailable than Treason ; and it's no new thing to fetter State-Prisoners under such an Accusation.

Mr. Ward. I beg leave to ask your Lordship one Question, whether you apprehend that *Curtis* deserv'd any Credit ?

Lord Townshend. I can say no more, than that he made some Discoveries; and there was no Prosecution against him. I knew nothing of the Man before, and I know nothing more of him now.

Mr. Ward. Did those Informations appear to be true?

Lord Townshend. A great part did, by the Confession of one of the Persons he accused.

Mr. Hungerford. As to the two Women that were examined just now, there was a Remark made, that their Testimony was extraordinary; I have five or six People to speak to their Reputation, if it sticks with Mr. Attorney.

Mr. Att. General. Perhaps such as themselves; but however call them.

Then Mr. Everall was called.

Mr. Hungerford. What do you know of *White* or *Meggison*?

Everall. I know nothing of them.

Mr. Ward. Do you know where the Prisoner's Foreign Letters used to be left?

Everall. His Letters always came to my House.

Mr. Ward. Was he usually watchful for the coming in of his Letters, as if there was any Thing of Concern in them?

Everall. No, they often used to lye some time before he call'd for them.

Mr. Ward. How long did they use to lye?

Everall. Sometimes three or four Days.

Mr. Ward. Were they kept up close till he called for them?

Everall. No, they lay in a publick Room, so that any one might see them.

Then Mrs. Everall was sworn.

Mr. Hungerford. What do you know of any Letters directed for Mr. *Francis*; where were they left?

Mrs. Everall. They used to be brought to our House, and they have lain two or three Days together on a publick Table before they have been fetch'd away.

Mr. Cowper. How long ago was that?

Mrs. Everall. About seven Years ago.

Mr. Cowper. Have any been directed to your House of late?

Mrs. Everall. No.

Mr. Ward. We shall now examine some Witnesses to the Copy-Book, to prove that it is not of his Hand-Writing; and I don't doubt but that will have its weight.

Lord Chief Baron. He own'd it to be his Copy-Book of his Letters to his Correspondents.

Mr. Cowper. We lay the stress upon this, that he said it was his Copy-Book of his Letters to his Correspondents Abroad.

Mr. Ward. But you know Mr. *Buckley* laid a stress upon its being his Hand-Writing.

Then one *Rafter* was sworn.

Mr. Hungerford. Show him the Copy-Book, look upon it, are you acquainted with the Prisoner's Hand-Writing?

Rafter. Yes.

Mr. Hungerford. Is any part of that Book his Hand-Writing?

Rafter. No, I take it to be his Son's, *George Francis*'s: The Prisoner writes a smaller Hand. I take no part of it to be his Hand so far as I have gone.

Mr. Hungerford. I believe it may be of use for all the Witnesses to look it over; we have four or five to this Point; and if I am rightly instructed, there is not one Word in that Book wrote by the Prisoner.

Mr. Justice Pratt. If it is not his Writing, whose do you take it to be?

Rafter. I don't take it to be his.

Mr. Justice Pratt. Whose do you take it to be? Are you acquainted with his Son's Hand?

Rafter,

Rafter. I don't know whether it is his Son's or not.

Mr. Justice Pratt. Are there any other Persons that write for him?

Rafter. He had sometimes.

Mr. Att. General. Here is a Letter of his own writing; pray let him look on that, and see whether that is his Hand; do you believe that to be his writing.

Rafter. No, I don't think it is.

Mr. Att. General. *Curtis* has prov'd that he own'd that Letter.

Prisoner. What Letter did I own?

Then *Simon Francia* was called again.

Mr. Hungerford. What do you say to that Book?

S. Francia. There is not one Syllable of his Writing in this Book; I have known his Hand-Writing about twenty Years.

Then *Barwell* was sworn.

Mr. Hungerford. Are you acquainted with the Prisoner's Hand-Writing? Is any of that Book of his writing?

Barwell. None of it is his writing.

Mr. Hungerford. Do you know what Condition of Health he was in about the latter end of the Year 1714, and 1715?

Barwell. He was sick.

Mr. Hungerford. For a Year before he was taken, what Condition was he in? Was he able to write Letters?

Barwell. He was sick.

Mr. Hungerford. Did he use to write Letters in that time?

Barwell. I don't know.

Mr. Att. General. Whose Hand do you take it to be?

Barwell. How do I know that?

Mr. Att. General. Are you acquainted with his Son's Hand?

Barwell. No, not at all.

Then *Simon Francia* was called again.

Mr. Att. General. You have look'd on the Book; whose Hand-Writing do you take it to be?

S. Francia. I don't know.

Mr. Att. General. Do you know his Son's Hand-Writing?

S. Francia. I never had any Correspondence, or great Acquaintance with him.

Mr. Att. General. Did you ever see him write?

S. Francia. I don't remember that I did.

Mr. Ward. We will trouble you with but one piece of Evidence more; we will call *Dr. Cade*, who attended him in his Sickness. We have offer'd Evidence, that no part of that Book is his writing; we will now offer some Proof that he was not capable of writing at that time.

Then *Dr. Cade* was sworn.

Mr. Ward. Pray Doctor, did you attend the Prisoner as his Physician at any time?

Dr. Cade. My Lord, I was sent for to him on the second Day of November, 1714. I attended him till the 18th of the same Month, and within that time I visited him nine Times, I found him in a great deal of Pain, and he was lame in his Hand; sometime after my coming he grew better.

Mr. Ward. Was he confin'd to his Bed?

Dr. Cade. Sometimes he kept his Bed, and sometimes he sate up.

Mr. Ward. You say he was in Pain, and lame in his Hand; which Hand was it?

Dr. Cade. I don't remember which; nor do I know any thing of him, only at that time.

Sir J. Fekyll. Every one of the Letters were wrote after that time.

Prisoner. What Condition did you leave me in?

Dr. Cade. In a very bad Condition.

Prisoner. Did you not hear of the Condition I was in afterwards?

Dr. Cade. I don't remember that I heard any Thing of you after that.

Mr. Ward. We will call a few Witnesses to prove what Circumstances he was in, and that he was well affected to the Government.

Mr.

Mr. Hungerford. By my Instructions he appears to be a Foreigner, and so disinterested in those unfortunate Divisions that are among us: And accordingly there is nothing of Whig or Tory in his Letters.

Mr. Att. General. Don't you remember when he came to *Newgate* he wrote he liked his Company, for he found them all Tories.

Mr. Hungerford. We shall show you that he was zealous for the Good of the Kingdom, and was against all that was disadvantageous to Trade in the late Treaty of Peace. That he never went into any publick Places, except to the *Grecian Coffee-house*, which is a Place sure not tainted with Sedition.

Then Mr. Everall was called again.

Mr. Ward. How long have you known the Prisoner?

Everall. Several Years.

Mr. Ward. Has he been peaceable, and easy in his Conversation, with Respect to the Government?

Everall. I remember at the proclaiming the Peace he said, he thought the Nation was ruin'd, for he thought it a scandalous Peace.

Mr. Att. General. That is much; for you make him a *Frenchman*, sure he might have approved it.

Mr. Hungerford. This is not what I have in my Brief, but perhaps he may recommend himself to your Esteem by it: He doth not to mine.

My Lord, I will take up your Time only with this Remark: The great Foundation of this Evidence is the Confession made by the Man himself. Without the Key made by him, this had been applicable to no Body. I remember Sir *Joseph Jekyll* was pleas'd to say, he would not excite the Passions of the Jury, but rather appeal to their Judgments, so will I. Great Part of this Correspondence relates to Mr. *Harvey*, and one would have thought they had something extraordinary to have charged on him, considering the Length of his Restraint; but I need not observe to the Jury that he is at large. He was under Restraint, nothing could be imputed to him, and he is discharged.

Lord C. Baron. *Francia*, Have you any Thing more to say?

Prisoner. As for my Nativity I have more Witnesses. I have more Witnesses as to my Character. I have more Witnesses to prove that I was a quiet Man, and never disaffected to the Government.

Then Mr. John Slater was sworn.

Mr. Hungerford. What do you know of the Prisoner's Behaviour?

Mr. Slater. I have known him about four or five Years. There being a Commission of Bankruptcy against him, I was recommended to assist him in that Commission. I did give him the best Assistance I could, and I several Times met him, sometimes at the *Grecian Coffee-house*, and sometimes at my own House. I took him for a *Frenchman*, he used very much to espouse the Interest of the King of *France*, which I used to chide him for. As for Parties here, I had some Discourse with him, and he used to think we were a strange People to fall out among our selves.

Then Thomas Richardson was sworn.

Mr. Hungerford. What do you know of the Prisoner and his Behaviour?

Richardson. I have known him five or six Years, and I believe I have taken five or six Pounds of his Money. When he was sick he took a Liking to me, and would not be quiet unless I came often to see him, and I used often to sit with him in an Evening and bear him Company, and it was a great Surprize to me when I heard he was taken up, for he used often to drink a Health to King *George*, and hoped he should get up to see him, and hoped this would be a quiet Nation again. He was then so weak that he could not stir Hand or Foot. But he used to call me *Vulcan*, and bid me drink King *George's* Health.

Mr. Hungerford. How long is it since he was so weak that he could not stir Hand or Foot.

Richardson. About a Year and five or six Months. And when he got abroad, I then was forced to follow him for what he owed me, and I have gone after him several Times to the *Grecian Coffee-house*.

Lord C. Baron. Have you any Thing more to offer?

Prisoner. No.

Mr.

Mr. Soll. General. My Lord, I must beg Leave (by Way of Reply to what has been offer'd, on Behalf of the Prisoner) to say, That this is a Cause of very great Concern to the King, to the Royal Family, and to the whole Kingdom in general; And I may with Justice affirm, that this Day one of these two Points must be determin'd; Either that the Prisoner at the Bar is guilty of High-Treason, or that no Man can, as the Law now stands, be convicted of holding a foreign, traiterous Correspondence, if this Evidence be not sufficient; for here has been the strongest Evidence given of such a Correspondence, as I believe ever was, or perhaps ever can be given, according to the Nature of the thing.

The Gentlemen of the Jury will consider the Nature of the Treason, as it is laid in the Indictment, it is for compassing and imagining the Death of the King; now, that rests in the Imagination, and is compleat in the Mind; but there must be some open or publick Act that must appear to you in Proof, to convince you that the Prisoner had that Imagination. There are three Overt-Acts laid in this Indictment, and we have produced Evidence sufficient for the Proof of two of them, tho' if any one of them be prov'd, it is enough. The first is, Conspiring, consenting and agreeing to raise an Insurrection and Rebellion within this Kingdom, in favour of the Pretender; and for conspiring, consenting, and agreeing to solicit and procure from *France*, Arms, Ammunition, Men and Money, to aid and assist in such Rebellion; and the last, is for composing and writing several Treasonable Letters, declaring his Intention and Resolution to levy that War, and to raise that Rebellion.

The Evidence that has been given, is of two Sorts; it consists first, of Letters wrote by the Prisoner himself to his Correspondents in *France*, and secondly, of Letters wrote to him by such Correspondents, signifying the receipt of Letters wrote by the Prisoner to him, touching this traiterous Design. For Proof of the Letters wrote by the Prisoner, we have produced his Copy-book of Letters, wherein they are enter'd, prov'd to be part his own Hand-writing, and the rest his Son's; and indeed, it is a surprizing thing, that that Copy-book should remain, which indeed is so rare a way to perpetuate the Testimony of Treason, as I believe the like Evidence is never to be expected again; and it is absurd, to expect, when a Traitor writes into a foreign Country, that he should be able to produce the Original Letters. The Proof of this Copy-book to be his, is beyond doubt; it is proved by his own Confession, before three Witnesses, and in very strong Terms, *This*, says he, *is my Copy-Book of my Letters to my Correspondents abroad*. Is it possible that stronger Evidence can be given? Nay, he goes farther, as a Noble Lord inform'd you; for when he was examining the Prisoner, and the Prisoner pretended, that he was only a Conveyor of Letters, but did not write himself; says he, *As to what I have wrote, I appeal to my own Copy-Book of Letters*. They have brought indeed some Witnesses to say, That they believe that the Copy-book is not of his Hand-writing, tho' they don't tell you whose Hand it is. But that is not Material, nor of any Weight, for Copies of Letters are sometimes enter'd by the Parties themselves, and sometimes by their Servants, or others whom they appoint, and that is the same thing: but to answer that fully, the Prisoner has confess'd that part of this Copy-book was of his own Hand-writing, and the rest of his Son's.

As to the other Letters from *D'Aulmay*, his French Correspondent to him, which are many in Number, we have given the best Proof the Thing is capable of; we have produc'd the very Original Letters themselves, directed to him, with the Post Mark from *France*, found all in his Custody, and confess'd to be his Letters which he receiv'd from *France*, before three Witnesses. This shews evidently that there was a traiterous Correspondence, and is a plain Evidence, that the Prisoner sent those Letters mention'd to be receiv'd in *D'Aulmay's* Letters to him, to which these were Answers, and the Letters exactly tally as to Dates, Circumstances and Subject. If there had been but one of those Letters sent to the Prisoner, containing treasonable Matter, it would have been Misprision of Treason, if he had not discover'd it; but his going on with the same treasonable Correspondence for Months together, and in so many Letters, in every one of which he charges the Prisoner with writing High-Treason, and he preserving all those Letters, concealing and keeping them close; this

is a strong Evidence of his Approbation and Assent to that Treason and traitorous Correspondence. And so it is in the common Case, if a Man meet accidentally, not knowing of the Design, and light into the Company of Traitors, and hear their Discourse and say nothing, if he don't discover it, he is guilty of Misprision of Treason only, as a bare Concealment; but if he comes a Second time into their Company, and meet them again, and hear their Consultations, or the same Treason is propos'd and talk'd of, and he conceals it, he is guilty of High-Treason; because it shews a Liking and an Approbation of their Design, and so it was resolv'd in Sir *Everard Digby's* Case. So here, all these Letters that came from *D'Aulmay*, and were kept up close by the Prisoner, containing treasonable Matter, shew his Approbation of the Treason, and are a strong Evidence, that he sent those Letters to his Correspondent *D'Aulmay*, to which these are Answers: It has been said, that admitting these Letters were sent by *D'Aulmay* to the Prisoner, yet he is not answerable for what others write: That, surely, is a great Mistake; for if what he writes be Treason, it is his Duty to disclose it; and if he do not, but continue to receive such Letters, this is a clear Proof of his traitorous Correspondence, and by that he makes the Treason his own. They object farther, that the Prisoner was only a Conveyor of Mr. *Harvey's* and the Duke *D'Aumont's* Letters; but that this is otherwise, appears from the Letters themselves, for most of them relate to himself, and are meant of himself, and of a Correspondence with him; for it appears from his own Confession in his Examination prov'd by Three Witnesses, that this French Correspondence held from a little before the late Queen's Death, 'till a few Days before his Examination; which shews that the Correspondence was his own and carry'd on by himself.

In the next place we come to consider the Exposition and Meaning of these Letters, whether the Subject Matter be Treason or not; one of the Council for the Prisoner said, There was nothing in them but about Dogs and Horses; but that is a Mistake, for those were Mr. *Harvey's* Letters, which talk'd sometimes of Dogs and Horses; but give me leave to say, There seems even in them to be a good deal of Treason, intermixt with the Discourse of Dogs and Horses. Let us examine some of his own Letters, and see whether the Subject Matter be not Treasonable. It is not to be expected that Men will in these Cases speak out plain; no, the Treason is always to be dress'd up in a Cant, and many of these Cases have appear'd in this place. In my Lord *Preston's* Case, the Overt Act charg'd there, was sending treasonable Letters to *France*, to give the Prince of that Nation an Account of our Strength and Forces here; those Letters run all in a sort of Cant, and it was in that Case pretended, That the Meaning was uncertain, and that no body knew what to make of some of the Expressions in them; but notwithstanding that, both Judges and Jury took upon them to understand them, and he was found Guilty of High-Treason.

In the Letter of the 26th of *February*, *D'Aulmay* writes to the Prisoner, and desires to know some News, because the Interest of his Wife and Family, which, says he, is *Irish*, is concern'd in it, his Wife being a *Butler*, and of Kin to the Duke of *Ormond*. *Francia*, in Answer to that Letter writes him word, As for News, That he heard there was a Marriage in good forwardness, between the Prince in *Lorraine* and one of the Arch-Duchesses. 'Let me know, says he, what there is in it, since 'tis essential to the Interest of your Wife, that is to say, that *Ireland* as well as *England* was concern'd in the Pretender's Marriage; for every one knows who is meant by the Prince in *Lorraine*. Now see what Answer *D'Aulmay* sends back, he gives his Opinion freely, and thinks that this intended Marriage of the Chevalier de *St. George* (which by the way explains who the Prince in *Lorraine* was) with the Arch-Duchess, would not be a sure way to bring his Affairs to an happy Issue. What was to be done then? *Why*, says he, *A Party-War would be much more to his Advantage*. Is not this easily to be understood? Is not this Party-War, a Civil-War, an Insurrection, a Rebellion? *D'Aulmay* then giving his Opinion, That a Rebellion was the most Eligible Way; what is the Prisoner's Answer? why he closes with the Advice, but says, *That Persons of Fifty or Sixty Thousand Crowns a Year can't with Prudence run the Hazard of losing such Estates, unless more Encouragement be given them*: What is this, but solicit-
ing

ing Aid and Encouragement from *France*, for an Enterprize in which Men of Estates must run the Risque of losing them? It is said Persons in the Plural Number, not one Single Person, tho' the Prisoner's Council endeavour'd to put such a Colour upon it, but it is plain in a Party-War many must be concern'd.

In his Letter of the 28th of *March*, after he had express'd a great deal of Uneasiness and Impatience, at the Negligence and Delay of this Assistance from *France*, not usual in that Nation, after he had wrote again and again, and wonder'd the Delays were so great; at last, says he, *We are now to expect every Thing from your side of the Water*. What can be the Meaning of this, but that the design'd Rebellion here, was to be encourag'd from *France*. And this surely is as much as can be expected in an Affair of Treason, unless People were to write out plain, which is never to be expected, unless from Fools and Ideots who cannot commit Treason. All *D'Aulmay's* Letters to the Prisoner, tally with those of the Prisoner's own, and pursue the same Design, tho' under a Cant which runs thro' most of them, as was in the Lord *Preston's* Case. In that Case there was the Cant of a Law Suit, as in this; but my Lord Chief-Justice *Holt*, and my Lord Chief-Justice *Pollexfen* said, That would not acquit his Lordship of Treason, if the Jury understood them in that Sense as every body else would. And why Words and Letters are not to be understood in Court, as every body understands them out of Court, is a hard matter to be explain'd.

It was indeed insisted by the Council for the Prisoner, That there really was a Cause recommended to the Prisoner's Care, that is very true; but then the Distinction between this private Cause, and the publick Cause of the Pretender, appears from many of *D'Aulmay's* Letters; sometimes he calls it our Cause, sometimes the Cause of our Common Friend, and in a very remarkable Letter of *D'Aulmay's*, dated from *Paris*, 7. August 1715. he says, *The Prisoner was in the right to inveigh against that Indolence he reproached them with; but be perswaded*, says he, *'tis only so in appearance*. I even hope, that by this time you have convincing Proofs of it, and that we make suitable Returns to the good Disposition on your Side, and that at last, God blessing the just Cause of our Friend, will let him gain his Suit. To explain this Letter, the Time is very material, for on the 20th of *July*, before His Majesty inform'd his Parliament, that he had undoubted Intelligence of the Pretender's Design to invade these Kingdoms from Abroad. And in other Letters he distinguishes between the private Cause, and the Cause of the Pretender, and calls it my Cause. And in a Letter of the 14th of *September* 1715, *We know already*, says he, *what you tell us about the Cause of our Friend, which will soon end to his Satisfaction, or all Appearances will deceive us*; and then says, *As to my own Cause, I can't help telling you, That my Fate is very unhappy to have to do with so dishonest a Man*; if Treason be not meant by those Letters, what is? Let the Prisoner tell us the meaning of them. Neither he, nor his Council, have offer'd at any other Interpretation, nor have they offer'd to explain but one single Letter in the whole Packet, and that has been observ'd was a poor Interpretation, and contrary to the very Grammar and Sense of the Letter. But what puts this Matter beyond doubt, if there could be any, about the meaning of these Letters, is, that he himself tells you in his Examination, in express and positive Terms, That the Subject Matter of the Letters, that were to be communicated to Mr. *Harvey*, which are the Letters now produc'd in Evidence, was the Intention of the Pretender, to invade his Majesty's Dominions; and when he himself has allow'd this, who is to gainsay it? Can you have a better Witness than himself, to the Subject of his own Letters, and to explain his own Meaning?

There have been some Reflections offer'd which by no means ought to have been, and I think were very improper on this Occasion; and it is our Duty to take notice of them when they are offer'd. It was said, by way of Reflection, that first of all, the Prisoner's Books and Papers were seized, and then they were turn'd upon him, and made use of against him, as if this was illegal, unusual, and new; when every Body knows in those Cases, there can be no other Evidence, and is the same that has been done in all Ages past, and must be done in all Ages to come. I am sure they have no
reason

reason to charge the Government with Inclemency; there has been shewn; even in this very Case, as much Clemency and Tenderness as was possible. When the Noble Lord, my Lord *Townshend*, had the first Information of treasonable Practices against the Prisoner, he had been justified, if he had immediately sent his Warrant, and sent him to *Newgate* for High-Treason, but instead of that, he was cautious, and was willing to be further inform'd before he Committed him; and therefore he sends to the Post-Office and orders his Letters to be stop'd, in which he found the treasonable Correspondence confirm'd; and then he was taken into custody of a Messenger only, in order to be Examined. His Lordship thereupon gave him all the Opportunities he could desire, of throwing himself at his Majesty's Feet; but he grossly prevaricated with his Lordship, as appears by that Letter wrote to his Wife; wherein he takes notice, That in *Newgate* they were all Tories, and the Majority for the Government, *i. e.* sent thither upon that Account: 'You know, *says he*, why I am here, which can't be a Dishonour to me, be then at ease; 'I have not said any thing against Mr. *Harvey*, nor nothing can be done to him; he can only be suspected to be the Pretender's Friend.

And now give me leave to take notice that in this Letter, he gives a further Explanation of this Business; for he says, *According to their Information, i. e. the Tories, though every Thing should fail, my Lord Townshend could do nothing, for Affairs will be at an end in less than a Fortnight.* Now the Time is very material, every one knows that the Rebellion was just then breaking out; it began in *Scotland* in *September*, and in *England* in *October* following. They have call'd some Witnesses to the Prisoner's Reputation, but they have not proved any thing material on that Head, nor given a tolerable Account of him. But if they had, it would in this Case be of little or no weight; when a Thing is doubtful, Reputation may sway a little, but in Cases where the Evidence is so full and plain as in this Case, it can have no Signification or Weight. It was observ'd by us, That when the treasonable Correspondence began to be more plain and full, then the Prisoner desisted from entering his Letters in his Copy-Book; in Answer to which, it was urg'd by the Prisoner's Council, That it was improbable it should be so, for that the Correspondence was entirely interrupted for several Months together, because as they insisted in one of *D'Aulmay's* Letters, dated 17th *September*, he complains he had not heard from the Prisoner in Three Months; but that is grounded on a Mistake, for the Person that uses that Expression, is not *D'Aulmay*, but another Person, and it is wrote in French in a Postscript under *D'Aulmay's* Letter; for in the beginning of the Letter it self, *D'Aulmay* expressly says, He had received the Prisoner's Letter of the Ninth Instant, which shews the Correspondence continued, but was too gross to enter such Letters in his Copy-Book, or to write under the same Name; for now, he says, when he has any thing material, he would write in a strange Hand, and would sign it by the Name of *Jacques Chretien*, and that Mr. *Harvey* might write under the same Name too; but none of these Letters appear.

Thus I hope I have answer'd every thing that has been materially objected by the Prisoner's Council, and if you, Gentlemen of the Jury, do believe that the Prisoner at the Bar wrote these Letters, the Copies whereof have been produc'd to you, and that those Letters produc'd from his Correspondent *D'Aulmay*, were received by the Prisoner, and that he wrote the Letters therein mentioned, and that he has therein carry'd on a traiterous Correspondence, You will acquit your selves to your King and Country, and find him Guilty of the High-Treason charg'd upon him.

Mr. *Cowper*. My Lord, It may be proper on this Occasion, Mr. *Solicitor* having repeated the particular Parts of the Evidence, to take notice of some things, that have appeared in general in the course of this Tryal: We think it of Importance to the Publick, that this Traiterous Correspondence should appear in a proper Light, that the deluded Populace may be no longer to seek, who were the Persons that incited, and fomented the late unnatural Rebellion.

The Gentlemen of the Jury will observe, That our Evidence begins with a secret Information which was given, to a Noble Lord who was then Secretary

tary of State, of a Traiterous Correspondence carry'd on by the Prisoner; and his Accomplices: That Information was not immediately or hastily relyed upon, but Orders were given that all Letters, directed to *Francia* the Prisoner, should be intercepted at the Post-Office; accordingly you have heard, that several Foreign Letters from *France*, directed to the Prisoner were stop't, and sent to the Secretary's Office; those Letters fully disclosing the Treason, it was thought time to issue a Warrant, and send a Messenger, to seize the Prisoner and his Papers; and it is to us wonderful, that one of the Council for the Prisoner should undertake to censure that Proceeding, the neglect of which must have been censured, if it had not been done: after an Information receiv'd, of so vile and dangerous a Conspiracy, confirmed and made evident by Letters intercepted, was it possible for one, entrusted in so high a Station, under his Majesty, to do less than to cause the Person and Papers of the Prisoner to be secured.

You have heard, Gentlemen of the Jury, That from the Time of seizing the Letters, and Copy-Book of Letters, in the Lodging and actual Custody of the Prisoner, there is a regular and certain Proof, as to the Identity of the Book, and Papers produced at this time, and given in Evidence; they were carried by the Messengers, just as they were taken, to Mr. *Walpole*, who delivered them to Mr. *Buckley*, and the Witnesses all speak likewise, to the Book and Papers themselves, so that there remains no manner of dispute concerning them.

Amongst these Papers, Gentlemen, you will observe, there is one Letter that relates to Mr. *Harvey*, which is now produced because it is Evidence against the Prisoner *Francia*: He, it seems, was to manage Mr. *Harvey's* Correspondence, and did so for a considerable time, but at last Curiosity prevailed, and it is very remarkable, by what Accident that Original treasonable Letter happens to appear now in this Place: It seems the Prisoner, in Breach of the Trust and Confidence which was reposed in him, and to gratifie his Curiosity, opened the Letter, and finding he could not seal it up, and put it together again in that manner, but that it might be suspected he had opened it, for that reason he himself kept the very Original Letter under Mr. *Harvey's* own Hand. When that Letter comes to be read, it appears to be mysterious, as to the Figures and Numbers made use of, instead of the Names of Persons; but the Prisoner's Examination explains it, which shews he was Master of the Key, and of the Secret.

This Discovery was attended with Circumstances that will have their Weight, in a Cause of this nature, when this Letter found upon the Prisoner, is produced to the Person that wrote it, before a Committee of the Lords of the Council, you have heard that he was in the utmost disorder, as indeed well he might, that he express'd himself ready to disclose all that he knew; for what Person being in his Condition, and seeing one of his own Letters, which he believed safe in the Hands of his Correspondents abroad, would not have believed the Government Masters of the rest; I dare say *Francia's* impertinent Curiosity, was then unthought of and unsuspected. I am sorry, Gentlemen, to mention a particular Accident, which, however, serves to shew that the Correspondence was of a dangerous nature, otherwise what Account can be given, That that Gentleman, shou'd in about Twelve Hours after, make a desperate Attempt upon himself.

Mr. *Hungerford*. My Lord, I apprehend that nothing of this Matter ought to be mentioned here; whatever Mr. *Harvey* was liable to, he is now at Liberty.

Mr. *Cowper*. I say, My Lord, It had that Consequence; and if it had not been a Discovery of the utmost Importance, if it had not been thought very dangerous in its Consequence to himself, that Attempt upon himself had never been made: But so it was, and it is so far material, as it was occasioned by part of that Correspondence which the Prisoner was employed to transmit to the Conspirators in *France*.

You have heard, Gentlemen, That *Francia*, when he was first examined, capitulated for himself; that he promised to make a full Confession, and accordingly gave in a first, and second Information, which have been read to you; and I dare say, when he signed those Examinations, he really intended to save himself by a Discovery of his Treason; but when he had taken Counsel

with his Party and Fellow-Prisoners in *Newgate*, you find by his Letter to his Wife, he changed his Mind, and the Expression is to this Effect, *He hopes he had said nothing that could hurt either himself or Mr. Harvey, and that he laugh'd at any thing the Government could do to himself.*

Your Lordship has heard how artificially and maliciously it has been insinuated, That the Noble Lord, the Secretary of State, gave some Hopes of Intercession to be made in Favour of the Prisoner; I firmly believe, no Man living that knows that Lord, but thinks he would have been better than his Word, if the Prisoner had honestly deserved it. Whatever was said upon that Occasion, proceeded from the Prisoner's Assurances, that he would make a full Confession, that was the Ground and Condition upon which the Prisoner was told he should be recommended to Mercy. But let the World judge, whether that Noble Lord could justify it to his King, his Country, or to himself, to interpose in his Favour, when he came to discover by a Letter under the Prisoner's own Hand, That he was resolved to conceal all that he knew: Surely, the Condition being broke by the Criminal himself, it became the Duty of the Noble Lord not to intercede for an obstinate Offender; one, that was determined to abide every Extremity, rather than do his Duty, by disclosing those Treasons that were latent in his Breast; so that we owe the Discovery which is made by the Examinations to the same Providence that has brought to Light the rest of the Evidence in a strange and wonderful Manner.

After so much time has been spent, it would be tedious to observe the particular Passages of the Letters which have been given in Evidence, only this I would observe, That when the Rebellion was not so near at hand, there seems to be some little Caution used in penning the Letters which have been read out of the Copy-book; but as the Time grew near, the Correspondence also grew more warm and open, as may be perceived by the Letters from abroad; which is the Reason, Gentlemen, you find him discontinue entering his own Letters in his Copy-book. It has been said by his Council, Can it be imagined that a Man would copy and enter Letters of a criminal Nature; but Gentlemen, the Question is, Whether he has done it? And you hear it proved by three Witnesses, that he owned it to be his own Copy-book of Letters to his Correspondents abroad; so that there can remain no doubt but that every Letter in that Book is a Copy of the Original wrote by the Prisoner: Whoever will observe the Time when he discontinues entering his Letters as formerly, which was just as the Rebellion was breaking out, will think it a strong Evidence, if Evidence were wanting, that the Letters entered, contained a criminal and traitorous Correspondence.

Had the Correspondence been Innocent, the same Method would have been continued; for the Rebellion had nothing to do with the sham Law-Suit. But as the Rebellion drew nigh, it became necessary to be more express and plain, as appears by all the Letters to *Francia* from abroad; which is the true Reason he discontinued entering his own Letters. Can any Body that can hear or read, doubt, but that the Prisoner continued to write to his Friend *Payen*? I think there is not one Letter directed to the Prisoner that don't in the first Line of it acknowledge the Receipt of the Prisoner's, *Yours of such and such a Date I have receiv'd*; and some of them acknowledge the Receipt of two Letters from the Prisoner at the same time, which shews his Diligence, and proves, that he writ oftner to his Correspondent than his Correspondent to him. You see, Gentlemen, the Letters from *D'Aulmay*, alias *Payen*, to the Prisoner, make it manifest he went on to the last in the same traitorous Correspondence; but it can't be expected his Original Letters should be produced. *D'Aulmay's* Letters plainly intimate the Tenour of the Prisoner's: I would trouble you but with an Instance or two amongst many that might be observed.

Of this kind are all those Letters which dissuaded the Prisoner from being impatient; that give him Assurance they are not Dilatory; that promise him every thing will answer his Expectation. All these, and many other Expressions of the like kind, manifest, that he was soliciting Aid from *France*, and that he did what in him lay to incite, promote and encourage an Invasion from Abroad, and the Rebellion at Home.

This,

This, Gentlemen, is the Nature of the Evidence that has been laid before you: The Discovery was accidental, the tracing of it, is strange and wonderful. Deep and secret are the Councils of Traytors; and yet we see, let them be never so cautious, whatever Method they may take to disguise their Treason, whatever subtle Inventions may be used to carry on their Conspiracy, yet the same Providence that has placed his Sacred Majesty upon the Throne of his Ancestors, will continue to guard and protect him, and to baffle the Devices of his Enemies. Upon the whole Matter, we think we have fully proved the Treason and the Overt-Act laid in the Indictment. We think it may reasonably be concluded from the Evidence, That the Prisoner has conspired, consulted, and agreed to raise and levy War within this Kingdom, to depose and murder the King; that he has written to and received from his Correspondents abroad many Letters to procure foreign Assistance for that Purpose; and the Court will inform you, Gentlemen, that this is Treason in the Prisoner at the Bar.

Lord Chief Baron. Gentlemen of the Jury, *Francis Francia* stands indicted of High-Treason, for compassing and imagining the King's Death; Contriving to depose him from the Throne, and to advance the Pretender to the Crown. And there are laid in the Indictment several Overt-Acts; One is, That he consulted and agreed to raise an Insurrection and Rebellion against the King: And that for that Purpose he wrote Letters to divers Foreigners, to sollicite and procure Arms, Men and Money, and to cause an Invasion; and caused those Letters to be sent to divers Foreigners in *France*.

This is the Substance of the Indictment, and to prove this, it has been shewn you how he was taken and seized. And *Mr. Smith* tells you, it was upon the Nineteenth Day of *September*, 1715. that he had a Warrant to seize him: That he went with another Messenger, since deceas'd, whose Name was *Wilcocks*, and found him and a Woman in Bed. The Prisoner in a little time got up. He tells you there was a Closet in the Room, the Door whereof he caus'd to be open'd, and in it, upon a Shelf, found a Parcel of Letters lying open in Folio, wrote in French, and a Book, that has been produced, lying upon the Desk. He put up the Letters and the Book together; when he had so done, says the Prisoner, *What do you take that Book for? That is my Copy-book of my Letters to my Correspondents, and there is nothing material in that.* The Messenger took Notice of a sort of Writing at the End of it, that he knew it by again, and the Prisoner said, *That was his Son's Writing.* It has been deduced to you, that the Book and the Letters that have been produced to you, are the same Book and Letters that were seized in the Prisoner's House, and carried to my Lord *Townshend's* Office.

Mr. Walpole tells you on what Day the Warrant was granted, and that the next Day the Book and Papers were deliver'd to him by the Messenger; that he look'd over them with *Mr. Buckley*, and then he carried them to my Lord *Townshend*; and that the Prisoner owned the Letters upon his Examination before my Lord, and said, *This is my Book of my Letters to my Correspondents; some of them were enter'd by me, and the rest of them by my Son.* This is prov'd to be the same Book; and upon perusal of the Letters, *Mr. Walpole* proves them to be the same that were brought to him by the Messenger.

Mr. Buckley says, That when these Letters were brought to the Office, he read several of them; and that when *Mr. Walpole* went to *Holland*, they were left with him, and he copied several Passages out of them. *Mr. Buckley* was present at the Prisoner's Examination, but can't say any thing as to the Books being shown to him, because he was busy in taking the Examination; but says, that *Francia*, upon his Examination, would not be sworn upon a *New Testament*; but took a Book out of his Pocket, and was sworn upon that, that his Examination was true. He subscribed his Name to it, and it was read over to him. It was objected, That he was refused the Liberty of reading it: But there was no such thing; he might have read it, and it was read to him, and he was never refused to read it.

My Lord *Townshend* informs you, that he having received an Information, That a Correspondence was carried on between the Duke *D'Aumont*, the late Duke of *Ormond*, and *Mr. Harvey*, and that Letters pass between them by means of the Prisoner, there were Orders sent to the Post-Office, to stop all Letters directed to *Francia*; that the Prisoner being examin'd before my Lord,

own'd all these Letters. And, says he, *As to my own Letters, I appeal to my Book which will show them*; these are so many Evidences, that he own'd this Book to be the Book of his Letters. *What others write to me, says he, can't affect me; but as for my own Letters I appeal to my Book.* My Lord says, There seem'd to be a Disposition in him to tell all he knew, and he offer'd to explain the Letters there produced; that at the next time Mr. *Harvey's* Letter was produced, and he explain'd the Figures in that Letter; and my Lord *Townshend* then took him to be sincere, but he found afterwards, that he had not discover'd all he knew. These Letters were laid upon the Table during the time of the Examination, and were taken back again. The Prisoner ask'd several Questions about Money being given him, and more offer'd to him, by my Lord *Townshend*. My Lord gave an Account of that, and says, That the Prisoner pretended to be in a miserable Condition, his Wife starving, and he begg'd hard for something, pretending to be miserably poor; and as he was going away, as meer Alms, my Lord gave him Three or Four, or Five Guinea's, not as any Encouragement to him to swear any Thing, but as meer Alms, because he begg'd so hard, and pretended to be in so miserable a Condition. Then he desired to know, whether it was not promis'd him, That his Examination should not be produced against him. He was told, That if he was candid there should be no Advantage taken against him, and that my Lord would interceed on his behalf; and if he had been so, no doubt, my Lord would have done what he could to incline the King to be favourable to him; but after this, my Lord found he knew a great deal more than he would discover. His Wife came indeed to my Lord, and pretended she could prevail upon him to discover, if she might be admitted to him; but after this, when he was in *Newgate*, a Letter was found directed to his Wife, in which he said, He met with good Company in *Newgate*, and hoped he had said nothing against Mr. *Harvey* which would prejudice him; and upon this, my Lord *Townshend* did not think him so sincere as he pretended to be at first. Mr. *Buckley* proves that Letter to be of his Hand-Writing. In it he desires his Wife to make her self easie, *They were all Tories that were there; he had good Company, and the Business will be at an End in a Fortnight.* What Business could he mean? Nothing but that about which the Correspondence was, and *God will assist us; I know nothing against Mr. Harvey, he is only suspected to be for the Affair; he was well known to be so before; and if all were here that are so, he believed, Three Parts of the Nation would be there.* So that he had a good Opinion of the Cause, and that it would be over in a Fortnight.

This Examination was also prov'd by Mr. *Stanhope*, who says, That the Letter of Mr. *Harvey* annexed to it, was produced at Council to Mr. *Harvey*; that he was in the utmost Confusion, chang'd Countenance, desir'd to withdraw, and to have liberty to speak to a certain Lord: My Lord *Townshend*, and Mr. *Stanhope*, both thought him in a good Disposition to discover, but that very Night he stabb'd himself. As to the Examination, he pretended he was not suffer'd to read it; but Mr. *Stanhope* says, That every thing of Consideration was repeated more than once or twice; and after the first Night's Examination, he represented himself to be in a miserable Condition, and thereupon my Lord *Townshend* did give him some Money, what it was he knows not; and this was after he had sign'd his Examination, and shew'd no reluctancy to it; and says, That he would not have been denied to have read it, if he had desir'd it. This Examination being thus proved, it appears to have been taken as fairly and carefully in all respects, and with as much kindness to the Prisoner as could be; Things were gone over and over again. It has been read, and there are some things in it that explain this Correspondence, and tell you how it was begun and carried on.

It was begun by Means of a Law Suit that was recommended to him to manage here, and that brought on the Correspondence between him and the Abbot *Butler*: This begun a little before the Queen's Death, and it continued 'till within a few Days of the Prisoner's Examination. During that Correspondence he received several Letters from the Abbot, directed to Mr. *Harvey*, and several were convey'd to the Abbot from Mr. *Harvey*, which were sometimes brought by Mr. *Harvey* himself, and sometimes sent by other Hands. The Prisoner also explains the Initial Letters and Numbers in Mr. *Harvey's* Letter, and

and then tells you, That he believes the Subject Matter of the Letters wrote to Mr. Harvey, by Payen, alias, D'Aulmay, was the Design of the Pretender to invade these Kingdoms; this he could not know unless he had been privy to the Design. If a Man is privy to a treasonable Design, and contributes to carrying it on, it is not then barely a Misprision: If he comes to the Knowledge of Treason, without being otherwise concern'd in it, and do's not discover it to a Magistrate, this is Misprision of Treason; but if he Assents to the Treason, or Acts in carrying it on, It is High-Treason.

In the next Examination it is, That he shews what the Marks in Mr. Harvey's Letter signifie: That 22 is the Duke D'Aumont, 6 the French King, 17 is the Word Tory, and believes that by 8 is to be understood the Pretender, and by 9 is to be understood his Majesty. There are some Marks that he don't know, but his knowing thus far the Signification of these Marks, shews that he was privy to the Design.

Mr. Harvey's Letter is annex'd to this Examination, and that has been read to you; there are some Things remarkable in that Letter, tho' a great part of it seems to be about some Money that he wanted to be paid him; yet at the end he says, *Prefs 22 to think of his Friends; it will be well for 6; all Things look well for 8, and in my heart, I think better than ever; 9, says he, Every Day loses himself, and for the 24000 that makes for 8 and 6, that is, for the Pretender and the French King.* He says, That opening the cover the Letter stuck to the Seal, and that was the reason that he kept it by him, and did not send it forward. If this Man had not been for carrying on the Design, it had been his Duty to have carried this Letter to the Secretary of State, he ought to have discover'd it to a Magistrate; but instead of that, he owns, That he has since written other Letters that have been read to you.

At the beginning of the Correspondence D'Aulmay desires to have some News, and Francia tells him, There was a Discourse of a Marriage in Forwardness between the Prince at Lorrain and the Arch-Dutcheff. 'Let me know, says he, what is in it, for it is for the Interest of your Wife, for he had married a Wife whose Name was Butler. D'Aulmay writes word again, 'As for the Marriage of the C——r St. G——e; but it is in Answer to the former Letter, and it is known that he was called by the Name of the Chevalier St. George; so that it must be the same Person. He says, There had been some Talk of that Marriage, but no mention had been made of it lately, I am of Opinion, says he, *that it will not be a sure way to bring his Affairs to a happy Issue; a Party War would be of more Advantage:* Francia writes again to D'Aulmay, and complains, That some Letters had not been answered, tho' entirely for the Affair. And what that Affair is, must be left to you to judge. Besides, says he, I must tell you, That Persons of Fifty or Sixty Thousand Crowns a Year, won't run the Hazard of losing such Estates unless more Encouragement is given them; you will be understood if you mention it to that Lord. And I must add, That the Misfortune of a certain Person, is more owing to your Delays on the other Side the Water, than to the Party that is against him. They would have you think, that by Persons of Fifty or Sixty Thousand Crowns a Year, was meant a Person in France, that had suffered by being concern'd in the Revenues; but it is plain, it is meant of Persons here, that would not Hazard their Estates: And he adds, *You will be understood if you mention this to Duke D'Aumont.*

There are other Letters from the Prisoner; in one he tells D'Aulmay, He would advise them to satisfy Mr. Harvey, *I am perswaded to deal with him as has been done is no good Policy; and if ever I have the Honour to talk face to face with you, I will shew you clearly, how unhappily, thro' Negligences, very important Affairs have miscarried;* this must be the Affair of the Pretender, and not of the Law-Suit: The Affair that concern'd Mr. Harvey for Mr. Harvey, had nothing to do with the Law-Suit, but by his Letter shows himself to be concern'd, for what makes for 8 and 6, that is for the Pretender and French King.

There is another Letter from Francia, wherein he writes, *What you tell me at the end of your Letter, of your having spoken in the manner I desir'd you, is sufficient, and consequently we are now to expect every Thing from your Side of the Water, that is to say, Explications, &c.* I must leave it to you, to consider what he meant by that.

In another Letter he says, I am order'd to tell you, on the part of Mr. Harvey, that you will do him a Pleasure in desiring the Duke D'Aumont, in his Name, to send hither some Persons to fetch the Horses and Dogs he has had so long, or else to send Orders to some body to take them: Affairs are here in such a Situation, that great Precautions must be used to avoid giving Umbrage to those who are in Power. When I have any thing particular to write to you, I will do it by a strange Hand, and will Sign Jacques Chretien. Take Notice of this, and provided you let me know you received this Letter, without its having been opened, I shall be easie. There then began to be more Difficulty, and therefore the Correspondence must be carried on in that Name, and in a strange Hand.

In another Letter he writes, Mr. Harvey gives his Service to you, and bid me tell you, When any thing New offers, if he can't write himself, he will get J. C. to write for him. That must be Jacques Chretien.

Then there are other Letters from D'Aulmay to Francia, which were found in the Prisoner's Custody; and several of them import his having received Letters from Francia. In one of them D'Aulmay says, You are in the right to inveigh against the Indolence you reproach us with; but be perswaded, 'tis only so in Appearance. I even hope, that by this time, you have convincing Proofs of it, and that suitable Returns are made to the good Dispositions of your side. This grew near the Time of the Rebellion. This Letter was dated the 7th of August, and the Rebellion broke out in October. He goes on, And that at last, God blessing the just Cause of our Friend, will let him gain his Suit; at least, Assistance and powerful Sollicitations shall not be wanting.

There are other Letters which show he knew the Design, and was privy to it; Our Friends Cause will soon be ready, God willing, to be tryed. That could not be the Law-Suit depending on this side the Water; for that Letter was wrote from France; and he says, All Preparations are making for it. The Friend who is related to my Wife, that is, the Duke of Ormond, has read your two Letters, and is mightily pleas'd with them. Which implies, that he had wrote Letters, tho' they are not entered in the Copy book.

Then he writes upon the 24th of August, under the Name of Payen; I am very much astonish'd I did not hear from you by the Post which arriv'd Yesterday. Our Friend was at my House, expecting it. We both of us desire you not to let one Post go without writing to us, and letting us know all that passes relating to the Cause of our Common Friend. That can't be the Cause of Butler's or D'Aulmay's Friend that was depending here. There are several other Letters which have been read to you, which mention both those Causes, and shew that he made a Distinction between them.

On the 14th of September, says D'Aulmay, The Contents of your last, without a Date, were very agreeable to me, as well as to all our Friends, who give you Thanks for it; and have order'd me to tell you so, and to desire you to continue. We know already part of what you tell us about the Cause of our Friend, which will soon end (please God) to his Satisfaction, or all Appearances would deceive us. As to my own Cause, I can't help telling you, that my Fate is very unhappy to have to do with so dishonest a Man.

I think this is the Substance of most of the Letters that have been read to you, which relate to his Correspondence, in endeavouring to procure the Pretender to make an Invasion here.

Upon these Letters it has been observ'd, That the Cause of the Pretender is one, and the Cause of the Law-Suit is another; but in all these Letters, there is plain Mention made of the Pretender; advising how to bring it on, and giving Intelligence about it. And these Letters being in the Prisoner's Custody, and written to him, and having such Treason in them as is mentioned; and he keeping these Letters by him, is a great Evidence that he assented to the Transaction, and to the endeavouring to bring the Pretender over, and to contrive, as well as he could, to carry on the Affair. If he had receiv'd but one Letter, and did not design to promote the Cause, he should have carried it to the Secretary of State, and then he had done his Duty. But to receive so many Letters, and to keep them so long, is an Evidence that he assented to the Matter, and that he did write such Letters as are mentioned to be received from him.

On the Behalf of the Defendant, there was an Objection made by his Counsel, that the Defendant is an Alien born; and that is an Objection to the

the Indictment. He is indicted as a natural born Subject, and they have examined several Witnesses to prove him an Alien. The Proof is strong, and you will find him an Alien, and so that matter must be left specially for the Judgment of the Court, and you must find the other Fact: And if you believe that he did promote the Invasion, or conceal and assent to that Design, that is, a conspiring the Death of the King, and he will be guilty of the Treason charg'd in the Indictment.

It has been objected, That in One of the Letters, the Person who wrote those Letters complains, That he had not heard of the Prisoner in Three Months; but that is a Mistake, for that was in a Postscript wrote by another Person, and in a different Hand; for the very same Letter shows, that there were Letters received from him within that Time.

They say, there is no direct Proof, that he intended the Life of the King; but if he kept a Correspondence, and promoted the intended Invasion, that is in Law, conspiring the Death of the King.

They have produced some People who have given an extraordinary sort of Evidence, of what Mr. *Buckley* and my Lord *Townshend* should say about this Matter, as if they promised him great Things if he would Swear against Mr. *Harvey*. *Simon Francia* said, That Mr. *Buckley* told him, if his Brother would Swear against Mr. *Harvey*, he should have a good Reward; and that my Lord *Townshend* said, He had given him Five Guineas, and he should have more.

Lucy White said, That she was in *Newgate*, and *Francia* desir'd her to conceal herself when Mr. *Buckley* came: That Mr. *Buckley* told him, he must Swear right or wrong for the Government; and if he did not Swear against Mr. *Harvey*, Mr. *Buckley* would charge him with High-Treason, for he had cheated my Lord *Townshend* of his Money, and done nothing for it.

Mary Meggison Swears, That Mr. *Buckley* should say, he would Swear against him, because he had cheated my Lord *Townshend* of Five Guineas, and would not Swear against Mr. *Harvey*.

Mr. *Buckley* was called again, and he denies it: He says there was no such Thing. And it seems improbable that a Man of his Credit should talk thus to the Prisoner; therefore the Credit of Mr. *Buckley* must be left to you, against the Credit of those Two Women. He tells you that *Francia* sent to him, to desire to speak with him, not about Mr. *Harvey*, but on Behalf of One *Flint*, who is a Prisoner in *Newgate*, and was concern'd in writing the *Shift Shifted*; and *Francia* sent a Message to Mr. *Buckley*, that he could do a Service in suppressing it. Mr. *Buckley* went to him, and he desired some Favour on Behalf of *Flint*, which was granted: And Mr. *Buckley* denies he had any Discourse with the Prisoner about Mr. *Harvey*.

Revell was called, and he proves, That *Francia* sent him to Mr. *Buckley*, to desire he might speak to him. That he order'd *Revell* to stand at the Door, and he did so, but did not hear what they said.

My Lord *Townshend* tells you, That Mr. *Buckley* gave him an Account, that *Francia* had sent to him, for the Purpose which he mentioned before: That my Lord ordered him to go: That he went accordingly, and he gave my Lord an Account what he had done about the Matter, and *Flint* had some Favour shewn him.

As to *Simon Francia*, my Lord says, He was several Times with him, but my Lord never propos'd any Reward for Swearing against Mr. *Harvey*; but told him, his Brother must deal openly, and tell all he knew, and that was the Way to recommend himself to Favour.

As to the Two Women, their Credit must be left in Opposition to my Lord *Townshend* and Mr. *Buckley*, which of them you will believe, for they deny what the others have Sworn.

Then they call another Witness *Everall*, He tells you, that the Prisoner's Foreign Letters were brought to his House; that they lay in an open Window, and sometimes remained there some Days, and any body might see them; and from thence they infer that they must be of no great Consequence: But how can you infer that? Who can tell by the Superscription of a Letter who it comes from, or what are the Contents of it; but these People can't say that these were all the Letters that were sent to him.

There

There is an Objection made to the Book; a Witness says, He has look'd upon it, and that none of the Book seems to be of his Hand-writing; he says, *Francia* writes a fuller Hand. *Simon Francia* has look'd upon it, and says, Not a Syllable is of his Writing; and others tell you, They believe it is not his Hand, and that he was three Months lame of a Rheumatism. As for that, it is not material whose Writing it is, if it contains the Copies of his Letters; and he has owned before three Witnesses, That it is the Copy-book of his Letters.

Dr. Cade tells you he was ill, and thence they infer, That it is not probable that he should write Letters so constantly as he did. He tells you, That from the Second of *November, 1714.* to the Eighteenth of the same Month, he was in pain in one of his Hands, but does not know which of them, nor whether he was able to write: But this was before this Correspondences by Letters that have been read to you, began.

Then they call some Witnesses to his Reputation: One tells you, that in Discourse with him about the late Peace, he said, It would ruin the Nation; that sort of Evidence is of no Signification. *Mr. Slater* has known him four or five Years; there was a Commission of Bankruptcy against him, on which Occasion he became acquainted with him. He says, he always seem'd to espouse the Interest of the King of *France*, but he always laugh'd at our Parties among our selves. Those that were for the Interest of *France*, would of Consequence laugh at our Divisions.

Richardson says, That he used to go to the Prisoner often in his Sickness, and knows no harm of him: That *Francia* liked him, and called him *Vulcan*, and bid him drink King *George's* Health, and drank it himself.

This is the Substance of the Evidence that has been given on both Sides: Now, if you believe these Letters were wrote to him and by him, and that they contain a Correspondence of a Treasonable Nature, inciting or encouraging any Persons to levy War against the King, or any thing which shews that he was privy and assenting to it, then he is guilty of High-Treason. If you don't believe those Letters were his, or that they don't amount to such a Correspondence, then you must acquit him.

If you find him Guilty, then you must also find that he was born in *France*, and is an Alien.

Then the Jury withdrew to consider of their Verdict; and when they returned into Court, were called over, and answer'd to their Names.

Cl. of Arr. Gentlemen, Are you all agreed on your Verdict?

Jury. Yes.

Cl. of Arr. Who shall say for you?

Jury. Our Foreman.

Cl. of Arr. *Francis Francia*, Hold up thy Hand.

Which he did.

Look upon the Prisoner, How say you? Is he Guilty of the High-Treason whereof he stands Indicted, or Not Guilty?

Foreman. Not Guilty?

F I N I S.